

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

FILED OCT 23 1943

IN THE

Joseph W. Stewart

CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8588

129

LEON S. CALHOUN,

Appellant,

vs.

LULU BURNETT JACOBS, ET AL,

Appellees.

Appeal from a Judgment of the District Court of the
United States for the District of Columbia

WILLIAM R. LICHTENBERG,
1346 F Street N. W.

OTHO D. BRANSON,
604 D Street N. W.

SAMUEL BARKER,
1346 F Street N. W.,

Attorneys for Appellant

INDEX

	Page
Statement of Case	2
Statement of Points	4
Summary of Argument	4
Evidence of Sufficient Mental Capacity.....	5
No Evidence of Fraud—Good Consideration.....	7
Court Erred in Admitting Evidence in Violation of T. 14, Sec. 308, D. C. Code, 1940.....	7
Court Erred in Admitting Evidence in Violation of T. 14, Sec. 302, D. C. Code, 1940.....	8

CASES CITED

3. Ludwig v. Bressler, 253 Fed. 8, 11, 165 C. C. A. 28.....	6
4. Mackall v. Mackall, 135 U. S. 167, 172.....	6
1. Hutchins v. Hutchins, 48 App. D. C. 495.....	8
2. Kaplan v. Manhattan Life, 71 App. D. C. 250.....	7
5. Stafford v. American Security & Trust Co., 60 App. D. C. 380	8
6. Thompson v. Smith, 70 App. D. C. 65.....	7
References to D. C. Code, 1940 Ed.	
Title 14, Sec. 308	7
Title 14, Sec. 302	8

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8588

LEON S. CALHOUN,

Appellant,

vs.

LULU BURNETT JACOBS, ET AL,

Appellees.

BRIEF FOR APPELLANT

This is an appeal by Leon S. Calhoun, defendant below, from a judgment for the plaintiffs below entered by the District Court of the United States for the District of Columbia on a verdict by the Court sitting as a judge and jury in an action to set aside a conveyance of real property. (App. 2, 11, 81). The District Court had jurisdiction under Title 11, Section 306, District of Columbia Code, 1040. This

Court has jurisdiction under Title 17, Section 101, District of Columbia Code, 1940.

STATEMENT OF CASE

This was an action brought by the heirs at law of Mamie Logan to set aside a conveyance made by her of a remainder interest in fee of a certain piece of property to Leon S. Calhoun. The Bill of Complaint alleged that the grantor did not have sufficient mental capacity to execute a valid deed on September 18, 1939, the date of execution.

The evidence showed that since 1937 Mamie Logan received relief and assistance from the District of Columbia through its welfare agencies; that she was possessed of certain lots in Maryland and the property involved herein. The evidence developed that Mamie Logan did not keep up the tax payments on the lots in Maryland and did not make any payments on the property involved herein.

In August, 1939, she decided to sell the lots in Maryland and a purchaser was secured for her by a Mr. Schwarz, an employee of the Public Welfare Department of the District of Columbia. That about the same time, Mamie Logan received a notice from the Building Association which held the trust on the property involved here wherein she was called upon to make immediate payment of the arrearage on the property. At the same time, the Public Welfare Department, having ascertained that Mamie Logan was possessed of property while receiving assistance from the District, threatened to prosecute her. Thereupon, Mr. Schwarz prepared a contract for the sale of the Maryland lots and called together Mrs. Logan, the purchaser of the Maryland lots, and certain other witnesses for a conference at his office on September 14, 1939, at which time the contract was executed. Four days later, on September 18, 1939, the deed involved in this case was executed by the said Mamie Logan

conveying to appellant a remainder interest in the property and reserving to Mamie Logan a life estate. The evidence disclosed that in October, 1936, Mamie Logan owed \$1400.00 on the said property and on September 18, 1938 she owed a balance of \$1338.00. The evidence further disclosed that the appellant, in entering into the agreement involved herein, undertook to pay all building association assessments and dues, all taxes, and to keep the home for the said Mamie Logan in a good condition during her lifetime. (Appendix, p. 13-19, 21-38, 53-66, 71-75, 88.)

Upon the conclusion of the testimony by the various interested parties called on behalf of the appellee, a physician was called by the appellees and was permitted to read to the Court the hospital records of the said Mamie Logan over the objection of the appellant (App. 40-49). When a question was propounded to the doctor which purported to include all of the evidence presented by the appellees on the question of the mental capacity of the said Mamie Logan, the Court stated that the evidence was not sufficient to warrant the asking of such a question and that there was no evidence to support a finding that Mamie Logan was incompetent at the time the deed involved here was executed (App. 49-52). Notwithstanding this specific finding, and notwithstanding the fact that no additional evidence was presented, the Court at the conclusion of the case ruled that Mamie Logan did not have sufficient mental capacity to execute the deed.

There was introduced in evidence the District Court file of a prior suit instituted therein by counsel for the appellees on the basis of a power of attorney which had been procured from Mamie Logan when she in her lifetime had refused to institute an action similar to the one involved herein. (App. 78-79).

Judgment was entered for the plaintiff, a motion for a new trial, and a supplemental motion for a new trial, and

a motion for a new trial on newly discovered evidence, were subsequently overruled.

STATEMENT OF POINTS

1. That the evidence shows that Mamie Logan had sufficient mental capacity to execute a valid deed and contract.

2. That the finding of the Court was contrary to the weight of the evidence on the issue of capacity, fraud and consideration.

3. That the Court committed error by admitting into evidence the medical records of Mamie Logan, in violation of the 1940 District of Columbia Code, Title 14, Section 308.

4. That the Court committed error in permitting testimony with respect to transactions with the decedent in violation of the 1940 District of Columbia Code, Title 14, Section 302.

SUMMARY OF ARGUMENT

The two issues presented to the Court were:

1. Did Mamie Logan have sufficient mental capacity to execute a valid deed of conveyance on September 18, 1939, and

2. Were the terms of that contract and deed of conveyance so unconscionable as to warrant the setting aside of that conveyance by a court of equity.

The evidence presented with respect to the first issue clearly substantiated appellant's position that Mamie Logan did have sufficient mental capacity to execute a valid deed. It is undisputed that four days prior to the execu-

tion of the deed involved, she discussed with her attorney and a representative of the Public Welfare Association the advisability of selling her lots in Maryland and did in fact execute a contract for the sale of those lots. It is also uncontradicted that the deed and contract for the conveyance involved herein was prepared for Mamie Logan by her attorney; that she conferred with her attorney, and that she had a complete understanding of what she was doing at the time she signed the deed. It is also clear that subsequent to the conveyance, she refused to take any action to set aside the conveyance and fully understood the meaning of the bargain into which she had entered with the appellant.

With respect to the issue of fraud, the lower Court stated in his findings from the bench that he found no fraud. The evidence disclosed that appellant agreed to provide a home for Mamie Logan; to assume an indebtedness of approximately \$1400.00, plus all tax assessments and improvements on the home for the lifetime of the grantor. No evidence of a life expectancy of the grantor was presented and upon the basis of an expectancy of but two or three years, it is apparent that the grantor was not defrauded or overreached in any way.

The Court below erred in two material respects:

1. It permitted testimony in violation of Title 14, Section 308, of the District of Columbia Code, 1940, and
2. It permitted testimony in violation of Title 14, Section 302 of the District of Columbia Code, 1940.

**THE EVIDENCE ESTABLISHED THE FACT THAT
MAMIE LOGAN HAD SUFFICIENT CAPACITY TO
EXECUTE A VALID DEED AND CONTRACT.**

The test of the sufficiency of mental capacity of a person

to dispose of property has been stated in numerous Federal decisions.

“*Ludwig v. Bressler*, 253 Fed. 8, 11, 165 C. C. A., 28”: The question of mental capacity of an aged or feeble person to dispose of her property is not whether or not the powers of her mind were impaired or whether or not she had ordinary capacity to do business, but it is whether or not she had any. The smallest capacity to understand what she was doing, and to determine intelligently whether or not she would do it.” *Sawyer v. White*, 122 Fed. 223, 58 C. C. A., 587. *Mann v. Keene Saving and Guaranty Co.*, 29 C. C. A., 547, 86 Fed. 51.

The evidence in the case clearly shows that Mamie Logan, knew what business she was about, had the determination to do it, and did convey a remainder in fee to the defendant. (App. p. 18-20, 23-30, 38, 53-67, 70-75).

There is not a scintilla of evidence to sustain a finding that a fraud was perpetrated upon Mamie Logan.

See *Mackall v. Mackall*,
135 U. S. 167, 172
10 S. Ct. 705,
34 L. Ed. 84.

Mamie Logan was advised by counsel; had a bona fide reason for acting and was motivated by self interest.

The exhibits from the Building Association cannot be taken as idle gesture and was a sound foundation for any reasonable person to believe that the indebtedness had to be paid, and seek some method or mode of paying the debts. (App. 82).

The Court rejected the testimony of experts, conceding

that there was insufficiency of evidence to draw a conclusion that Mamie Logan was of unsound mind, but draws the same conclusion from his personal opinion of the effect of a diabetic condition upon the human mind.

THE FINDING OF THE COURT WAS CONTRARY TO THE WEIGHT OF THE EVIDENCE ON THE ISSUE OF CAPACITY, FRAUD AND CONSIDERATION.

A. The testimony of the witnesses for both sides clearly established the mental capacity of Mamie Logan and the Court clearly indicated acceptance of that fact. (18-20, 23-30, 38, 53-67, 70-75).

B. The Court found that no fraud had been perpetrated on the grantor. (81).

C. The evidence clearly disclosed a good and sufficient consideration. (82).

THE COURT ERRED IN ADMITTING THE MEDICAL RECORDS OF MAMIE LOGAN IN EVIDENCE IN VIOLATION OF TITLE 14, SECTION 308 OF THE DISTRICT OF COLUMBIA CODE, 1940.

The admission in evidence of information confidential in its nature which was acquired in attending the deceased, without the consent of her legal representatives, constitutes prejudicial error in this case. (40-49).

Kaplan v Manhattan Life Ins. Co.
71 App. D. C. 250
Thompson v Smith
70 App. D. C. 65

Stafford v. American Security and Trust Co.,

60 App. D. C. 380

Hutchins v. Hutchins

48 App. D. C. 495

THE COURT ERRED IN PERMITTING MR. SCHWARZ WHO WAS A PARTY TO THE TRANSACTION INVOLVED HEREIN TO TESTIFY AS TO CONVERSATIONS WITH THE DECEASED IN VIOLATION OF TITLE 14, SECTION 302, OF THE DISTRICT OF COLUMBIA CODE, 1940.

Schwartz testified that he had prepared the document involved and had witnessed it. He also testified to conversations with the decedent, all in violation of the above quoted section of the Code. (13-21).

Respectfully submitted,

WILLIAM R. LICHTENBERG,
1346 F Street N. W.

OTHLO D. BRANSON,
604 D Street N. W.

SAMUEL BARKER, ..
1346 F Street N. W.,

Attorneys for Appellant

BRIEF FOR APPELLEES

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 8588

LEON S. CALHOUN,

Appellant.

VS.

LULU BURNETT JACOBS, ET AL,

Appellees.

**Appeal from a Judgment of the District Court of the
United States for the District of Columbia**

COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED NOV 12 1943

Joseph A. Stewart

CLERK

COBB, HOWARD & HAYES,

Attorneys for Appellees,

613 F Street N. W.,

By: George E. C. Hayes.

INDEX

	Page
JURISDICTION	1
STATEMENT OF CASE	2
QUESTIONS INVOLVED	3
THERE WAS SUBSTANTIAL EVIDENCE TO SUSTAIN THE FINDING OF THE COURT THAT MAMIE LOGAN DID NOT HAVE THE MENTAL CAPACITY TO EXECUTE A VALID DEED AND CONTRACT	3
THE FINDING OF THE COURT WAS WITH THE WEIGHT OF THE EVIDENCE ON THE ISSUE OF CAPACITY, FRAUD AND CONSIDERATION	5
THE COURT DID NOT ERR BY ADMITTING EVIDENCE OF THE MEDICAL RECORD OF THE DECEASED	6
THE LOWER COURT COMMITTED NO ERROR IN ALLOWING THE WITNESS SCHWARZ TO TESTIFY IN RESPECT TO TRANSACTIONS WITH THE DECEDENT IN VIOLATION OF TITLE 14, SEC. 302 OF THE DISTRICT OF COLUMBIA CODE (1940)	9
CONCLUSION	9

CITATIONS

	Page
Ludwig v. Bressler, 253 Fed. 8, 11	4
Allore v. Jewell, 94 U.S. 506-513, 21 L.Ed. 260	4
Ralston v. Turpin, 129 U.S. 663, 32 L.Ed. 747	5
Thackrah v. Haas, 119 U.S. 499, 30 L.Ed. 486	5

Conley v. Nailor, 118 U.S. 127, 30 L.Ed. 112	5
Flach v. Gottscalk, 88 Md. 368, 41 A. 908	5
Hutchins v. Hutchins, 48 App. D. C. 495 (1919)	7
Labofish v. Berman 60 App. D. C. 397, 55 F(2d) 1022 (1932)	7
McCartney v. Holmquist, 70 App. D. C. 334, 106 F(2) 855 (1939)	7
Thompson v. Smith, 70 App. D. C. 65, 103 F (2d) 936 (1939)	7
Schornick v. Schornick, Arizona 220 Pac. 399, 31 A.L.R. 159 (1923)	9
Bruington v. Wagoner, 100 Kan. 10, 164 Pac. 439	9
Fleck v. Brewster, 107 Kan. 63, 190 Pac. 616 (1920) ..	9
Sprouse v. Magee, 46 Idaho 622, 269 Pac. 993 (1928) ..	9
131 Ohio St. 140, 2 N.E. (2d) 248 (1936)	9

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 8588

LEON S. CALHOUN,
Appellant,
vs.

LULU BURNETT JACOBS, ET AL,
Appellees.

**Appeal from a Judgment of the District Court of the
United States for the District of Columbia**

BRIEF FOR APPELLEES

JURISDICTION

The Findings of Fact and Conclusions of Law of the
lower Court were entered in the record July 31, 1943.

(App. 88). The jurisdiction of this Court is invoked under Title 17, Section 101, District of Columbia Code, 1940.

STATEMENT OF THE CASE

This was an action brought by the heirs at law of Mamie Logan to set aside a conveyance made by her of a remainder interest in fee of a certain piece of property to Leon S. Calhoun. That as of, to wit, September 18, 1939, the said Mamie Logan executed a deed purporting to convey to Leon S. Calhoun in fee simple, Lot 106, Square 503, improved by a dwelling known as 1311 Union Street, Southwest, City of Washington, District of Columbia, reserving to herself a life interest in the same. That the estimated value of the said property was \$4650.00. (App. 120). That for a long period of time the said Mamie Logan suffered from diabetes. That this condition evidenced itself in a gangrenous condition of the foot in to wit, February 1938 (App. 122). That on, to wit, February 20, 1937, the said Mamie Logan made application for and received aid for the blind from the Public Assistance Division of the District of Columbia; and that she was as a matter of fact almost totally blind. (App. 13-91). That in, to wit, November 1939, the said Mamie Logan suffered from a diabetic coma, necessitating hospitalization for several weeks. That thereafter Mamie Logan was, from November 1939 to December 11, 1939, treated at the hospital for diabetes. That on February 21, 1940, she was admitted to Gallinger Hospital, psychopathic ward, where she remained until she died. (App. 97-112).

While confined in Gallinger Hospital, on the last occasion referred to above, upon investigation instituted by the Mental Health Commission, she was adjudged to be of unsound mind, and was committed by Order of Court, to St. Elizabeth's Hospital for the Insane, but died before remov-

al from Gallinger Hospital to St. Elizabeth's Hospital. (App. 117-119).

That on September 18, 1939, at the time when Mamie Logan executed the deed, the validity of which is attacked in this suit, she was not mentally capable of transacting any kind of serious business; that her physical condition at that time was such that she evidently had but a short time to live; and the consideration for the deed was obviously entirely inadequate and the transaction inequitable. (App. 18-25-96-111-112-157-135-136-148).

On September 18, 1939, the said Mamie Logan was \$222.58 in arrears in her payments to the Equitable Cooperative Building Association, inclusive of taxes, but the Association knew her condition; was entirely satisfied with the security which the property offered for the amount due it, and there was no threat of foreclosure, nor any intention on the part of the Association to foreclose. (App. 33 to 37).

QUESTIONS INVOLVED

THERE WAS SUBSTANTIAL EVIDENCE TO SUSTAIN THE FINDING OF THE COURT THAT MAMIE LOGAN DID NOT HAVE THE MENTAL CAPACITY TO EXECUTE A VALID DEED AND CONTRACT.

1. The requisite mental capacity to execute a valid deed and contract.
2. Whether the finding of the Court was contrary to the weight of the evidence on the issue of capacity, fraud and consideration.
3. Whether the Court committed error by admitting into evidence the medical records of Mamie Logan, in viola-

tion of the 1940 District of Columbia Code, Title 14, Sec. 308.

4. Whether the Court committed error in permitting testimony with respect to transactions with the decedent in violation of the 1940 District of Columbia Code, Title 14, Sec. 302.

The appellant, in arguing this point of law, has failed to use the proper test of mental capacity. In *Ludwig v. Bressler*, 253 Fed. 8, 11, the case quoted by the appellant, the conveyance in question was found to be bona fide, with good consideration and with those basic elements before it, the Court then found that the incompetent would have to have no capacity to do business before the conveyance would be set aside.

In the instant case testimony clearly showed and the Court found that the consideration for the deed was entirely inadequate and the transaction inequitable.

It is thus apparent that there is an entirely different test of mental capacity to be used in the instant case. In the case of *Allore v. Jewell*, 94 U. S. 506-513, 21 L.Ed. 260, the Court, under facts very similar to those of the instant case, said:

“It is not necessary, in order to secure the aid of equity, to prove that the deceased was at the time insane, or in such a state of mental imbecility as to render her entirely incapable of executing a valid deed. It is sufficient to show that from her sickness and infirmities, she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance. From these circumstances, imposition or undue influence will be inferred.”

The testimony of witnesses on both sides clearly estab-

lished the lack of sufficient mental capacity of Mamie Logan and the lower Court took such testimony into consideration in making its finding (App. 18, 25, 67, 96, 111, 135, 136, 157).

Even under erroneous tests of mental capacity as applied by the appellant the lower Court would be sustained in its finding since it found that the deceased did not have the mental capacity to execute the conveyance, which finding is amply substantiated by the testimony as quoted above.

THE FINDING OF THE COURT WAS WITH THE WEIGHT OF THE EVIDENCE ON THE ISSUE OF CAPACITY, FRAUD AND CONSIDERATION

The evidence in the case clearly shows that Mamie Logan did not have the capacity to execute the deed in question (App. 18, 25, 67, 96, 97-113, 117-119, 135-136, 157).

It was not necessary that the Court make a finding that there was willful fraud in order to set aside the conveyance. The general rule has long been established that the right of avoiding the contract or conveyance of an incompetent exists notwithstanding the one who contracted with the incompetent had no knowledge of his insanity and possessed no information calculated to place him upon his guard; the existence of fraud is in no sense a prerequisite to the exercises of the right of avoidance on the ground of incompetency. *Ralston v. Turpin*, 129 U. S. 663, 32 E.Ed. 747; *Thackrah v. Haas*, 119 U. S. 499, 30 L.Ed. 486; *Conley v. Nailor*, 118 U. S. 127, 30 L.Ed. 112; *Flach v. Gottscalk*, 88 Md. 368, 41 A. 908.

The appellant is in error when he states that the lower Court rejected the testimony of experts, conceding that

there was insufficiency of evidence to draw a conclusion that Mamie Logan was of unsound mind.

First, the lower Court did not reject the testimony of the expert, Dr. Williams, but said specifically—"The Court thinks the balance of his testimony is valuable." The only portion of the testimony the Court did not allow in the record being the statement of the expert as to a specific day when the deceased was not able to make a valid acknowledgment of the transaction concerning the transfer of the property.

Second, there was no expert testimony conceding that there was an insufficiency of evidence as to the unsoundness of mind of Mamie Logan, rather the testimony of Dr. Williams showed that the malady of the deceased caused a gradual deterioration of her mind. (App. 157).

It is clear to the Court that the lower Court was correct in finding that there was a lack of consideration for the conveyance of the premises to the appellant. The evidence is uncontradicted that the only money spent by the appellant in taking care of the premises was \$25.00 spent over a period of five (5) years. (App. 148). Further that immediately after the death of the decedent, the appellant spent \$210.00 on repairs for the premises (App 148).

When considered together with the circumstances under which the conveyance was obtained, the value of the premises, the condition of the deceased, and the actual money expended by the appellant, it is obvious that there was no consideration for the conveyance of the fee simple interest of the premises to the appellant.

THE COURT DID NOT ERR BY ADMITTING
EVIDENCE OF THE MEDICAL RECORD OF
THE DECEASED

The District of Columbia Code (1940), Title 14, Sec. 302, provides:

“In the courts of the District of Columbia no physician or surgeon shall be permitted, without the consent of the person afflicted, or of his legal representatives, to disclose any information, confidential in its nature, which he shall have acquired in attending a patient in a professional capacity.

In the instant case the Court, over the objection of the appellant, permitted testimony as to the facts contained in the hospital records relative to the physical and mental condition of the deceased upon the consent of the appellee, the heir at law of the deceased. The issue, therefore, involved is whether an heir at law may properly receive the privilege provided for in the above quoted Section. In other words, the question is whether the heir at law within the meaning of “legal representatives” as used in this Section of the Code.

In not one of the cases in which this Court has been faced with determining what class or classes of persons were within the meaning of “legal representatives” has the present issue been involved or directly decided. In *Hutchins v. Hutchins*, 48 App. D. C. 495 (1919); *Labofish v. Berman*, 60 App. D. C. 397, 55 F(2d) 1022 (1932); and *McCartney v. Holmquist*, 70 App. D. C. 334, 106 F(2d) 855 (1939), this Court was faced with and answered the question whether an executor or nominee had authority to waive the privilege. The view taken in these cases was that such an individual did not come within meaning of “legal representatives.” In *Thompson v. Smith*, 70 App. D. C. 65, 103 F(2d) 936 (1939), the only other case which dealt with the definition of “legal representatives” under this Section, declared that an executor de jure was *included*.

And it is most significant to note that this case is in no way limiting the term "legal representatives" to executors and administrators, and by inference at least, suggests that the term might well cover *heirs at law*. (Italics ours).

But the appellant apparently relies upon the reasoning of the Wisconsin Court, and says: "It is not to be assumed that Congress placed the power of waiver in the hands of an executor, who in many cases is a total blood stranger to decedent, or a corporate executor, looking only to the interests of its stockholders", and says further: "The secrets of the sick room should remain inviolate, and if the phrase 'legal representatives' is construed to include an executor, evil consequences will result, such as, for example, *cases in which the heirs at law may wish to waive the privilege* but are powerless to do so because a stranger or corporate executor can refuse." (Italics ours.)

These arguments might be pertinent if the local statute were ambiguous or might be appropriate if presented to the Congress in support of a proposed modification of the statute. They are inappropriate here (P. 68). (Italics ours).

It is submitted that the Court is free to decide that "legal representatives" under the Section in question includes heirs at law.

The expression "legal representatives" is equivocal. It may refer to the heirs or executors and administrators, or both. If "legal" here is considered synonymous with "lawful" it might well be said that the Section covers both heirs and executors. The heirs of the deceased are the lawful representatives of the real estate and the executor or administrator is the lawful representative of the personal estate of the deceased. The right to waive the privilege under this Section, in the case of the heirs, might well be said to be as desirable and equitable as the right of the executor or administrator to do so. No better illustration can be offered than the particular facts of the present case.

The Court might also find support for concluding that heirs at law are included within the meaning of "legal representatives" by noting the view taken by State Courts under statutes having more restrictive waiver clauses. In *Schornick v. Schornick*, Arizona 220 Pac. 399, 31 A.1L.R. 159 (1923), the Court decided under a statute which provided only for waiver of the privilege by the patient that an heir of the patient could likewise waive it. To the same effect are the cases—*Bruington v. Wagoner*, 103 Kan. 10, 164 Pac. 439 (1917); *Flick v. Brewster*, 107 Kan. 63, 190 Pac. 616 (1920); *Sprouse v. Magee*, 46 Idaho, 622, 269 Pac. 993 (1928); and 131 Ohio St. 140, 2 N.E.(2d) 248 (1936).

THE LOWER COURT COMMITTED NO ERROR IN ALLOWING THE WITNESS SCHWARTZ TO TESTIFY IN RESPECT TO TRANSACTIONS WITH THE DECEDENT IN VIOLATION OF TITLE 14, SECTION 302 OF DISTRICT OF COLUMBIA CODE (1940)

The title of the section of the Code in question is—"Testimony of *surviving* party", and reads as follows, in part: . . . If one of the *original* parties to a transaction or contract has . . ." (*Italics ours*).

It is uncontradicted that the witness Schwartz drew up the instrument in question and witnessed the same, that the parties to the instrument were the deceased and one Robinson. Thus it is obvious that the witness Schwartz was not one of the original parties to the instrument within the meaning of the statute, and that the objection to the testimony of Mr. Schwartz is groundless.

CONCLUSION

The issues in this case are in the main factual and given due consideration by the trier of the facts, the lower Court.

The judgment of the lower Court is based on the evidence and the weight of the evidence, and is the proper judgment upon consideration of all the evidence submitted.

There are no errors of law committed by the lower Court which in any wise effect or jeopardize the rights of the appellant, and, accordingly, there is no logical reason or legal basis for changing the said judgment. Therefore, the judgment of the lower Court should be affirmed.

Respectfully submitted,

COBB, HOWARD & HAYES,
Attorneys for Appellees,
613 F Street N. W.,
By: George E. C. Hayes.

JOINT APPENDIX TO BRIEFS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8588

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

FILED OCT 23 1943

LEON S. CALHOUN

Joseph W. Stewart

Appellant,

CLERK

vs.

LULU BURNETT JACOBS ET AL,

Appellees.

Appeal from a Judgment of the District Court of the

United States for the District of Columbia

INDEX

	Page
Complaint	2
Answer	6
Pre-Trial Statement	9
Memorandum Opinion	11
Alexander A. Schwarz	13
Eilean Brooks	21
Milton R. Johnson	32
Mattie B. Burnett	37
Dr. Eltore De Felippis	39
Dr. Ernest Y. Williams	49, 79
Russell Morris	53, 78
Ruth Venney	64
Chester Joshua Venney	66
Leon S. Calhoun	69
Opinion in Open Court	81
Exhibits	83
Findings of Fact and Conclusions of Law.....	85
Deed	88
Judgment	11

APPELLEE'S WITNESSES

	Page
Direct Examination—	
ALEXANDER A. SCHWARZ	91
Direct Examination—	
MISS EILEAN BROOKS	94
Cross Examination—	
MILTON R. JOHNSON	95
Direct Examination—	
MRS. MATTIE B. BURNETT	96
Direct Examination—	
URKWHART BURNETT	104
Direct Examination—	
DR. ELTORE DE FELIPPIS	113
Direct Examination—	
DR. ERNEST Y. WILLIAMS	115
Direct Examination—	
THOMAS W. PARKS	119
Cross Examination—	
RUSSELL MORRIS	123
Cross Examination—	
MRS. RUTH VENNEY	127

INDEX

iii

Re-Direct Examination—	
SAMUEL E. LACY	132
Cross Examination—	
CHARLES HAWKINS	135
Direct Examination—	
LEON S. CALHOUN	136
Cross Examination —	
LEON S. CALHOUN	140
Re-Direct Examination—	
RUSSELL MORRIS	149
Re-Direct Examination—	
ALEXANDER A. SCHWARZ	151
Re-Direct Examination—	
DR. ERNEST Y. WILLIAMS	152

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8588

LEON S. CALHOUN

Appellant,

vs.

LULU BURNETT JACOBS ET AL,

Appellees.

Appeal from a Judgment of the District Court of the
United States for the District of Columbia

JOINT APPENDIX TO BRIEFS

I

**Pleading, Docket Entries and Other Papers Designated by
Appellant**

Filed June 27, 1941

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA

Lula Burnett Jacobs
Detroit, Michigan
Urqwheart Burnett
1307 Union Street, S W
Washington, D C
Lula Beverly Burnett
Washington, D C
Annie May Burnett,
Henry Burnett,
Mamie Helen Burnett,
422 St. Nicholas Ave
New York City, N W
Marion Burnett
Washington, D C

Plaintiffs

vs

Leon S. Calhoun
215 1-2 K Streets, S W
Washington, D C

Defendant

Civil Action

No 11947

COMPLAINT FOR CANCELLATION OF DEED AND
RE-CONVEYANCE OF PROPERTY

The plaintiffs herein, Lula Burnett Jacobs, Urqwheart Burnett, Lula Beverly Burnett, Annie May Burnett, Henry

Burnett, Mamie Helen Burnett, and Marion Burnett, by George E. C. Hayes, their attorney of record, bring this action in their personal capacity as the surviving heirs of one Mamie Logan, deceased, who departed this life on, to wit, the 19th day of March, 1940; said plaintiffs allege that the said Mamie Logan at the time of her death left surviving her neither husband, any children, nor father or mother, and at the time of her death all of the aforesaid plaintiffs were adults, their relationship to decedent being as follows: Lula Burnett Jacobs, being a sister; Urqwheart Burnett, a brother; Lula Beverly Burnett, wife of a deceased brother, there being one child born of their marriage, to wit, Carl Burnett, now deceased; Annie May Burnett, Henry Burnett, Mamie Helen Burnett and Marion Burnett are the surviving children of Reddish Burnett, father of Mamie Logan, and Lucy Burnett, her mother, pre-deceased the decedent and Laura Burnett, a sister, and Henry Burnett and William Burnett, both brothers died unmarried prior to the death of said Mamie Logan.

That all of the aforesaid plaintiffs are citizens of the United States with residence as follows: Urqwheart Burnett, Lula Beverly Burnett and Marion Burnett are residents of the District of Columbia; Lula Burnett Jacobs being a resident of Detroit, Michigan and Annie May Burnett, Henry Burnett and Mamie Helen Burnett are residents of New York City, State of New York.

That the aforesaid heirs bring this suit in their capacity as the lawful heirs of said Mamie Logan, deceased, under the authority of Title 18, Section 101, of the Code of Laws for the District of Columbia and respectfully state to the Court as follows:

1. That heretofore, on, to wit, the 19th day of September 1939, and for a long time previously thereto, said Mamie Logan was seized and possessed in fee simple and by good title of record among the Land Records of the District of

Columbia, of all the piece or parcel of land situated in the District of Columbia, described as being Lot 106, Square 503, improved by a dwelling known as 1311 Union Street, S. W., said piece or parcel of land and improvements thereon being of the value of about \$4,000.00, encumbered by a first trust in the sum of approximately \$1,300.00 held by the Equitable Cooperative Building Association.

2. That while said Mamie Logan was seized and possessed of the aforesaid property, to wit, on or about September 18, 1939 the said defendant importuned and obtained wrongfully from the said Mamie Logan the form of an absolute deed conveying all of her right, title and interest in said property to the said defendant, Leon S. Calhoun, with the reservation therein of an estate merely for the term of her natural life, which deed has been duly recorded in the Land Records of the District of Columbia, as of September 19, 1939, in Liber 7390, at folio 393.

3. That the recital in said deed of a consideration of ten (\$10.00) dollars in untrue and unfounded and no valuable consideration of any kind existed or passed between the parties for the execution of said deed. That the formal execution of said deed was obtained under the following conditions:-

That a short time prior to the execution of said deed, Leon S. Calhoun, the defendant, in company with one Edward Robinson and Russell Morris, attorney at law and member of this Bar, had appeared at the home of said Mamie Logan to complete arrangements for the sale of certain lots located in Maryland and owned by said Mamie Logan; that while the aforesaid parties were at the home of said Mamie Logan, the defendant Leon S. Calhoun importuned and persuaded the said Mamie Logan to convey and execute a deed to her home to him, the said Leon S. Calhoun, upon the representation and assurance that he, the said defendant, would be responsible for all indebtedness

thereon and would contribute certain sums of money from time to time to support and maintain the said Mamie Logan, in addition to such moneys that Mamie Logan, being a person of advanced age, to wit, about 68 years of age, was and had been in a senile condition, helpless and unable to understand and comprehend a business transaction of this nature; further that her mental and physical condition was aggravated by blindness and the defendant knowingly took advantage of this situation and condition to procure the execution of the aforesaid deed without the payment of any consideration to said Mamie Logan. Further it is alleged that the signature of Mamie Logan was obtained to the aforesaid deed upon the false and fraudulent representation that she was merely transferring title to the aforementioned lots located in the State of Maryland and owned by Mamie Logan.

Further, that said plaintiff is advised that the defendant has expended a sum of money in the amount of, to wit, about two hundred (\$200.00) dollars, in and about the said property in the payment of certain delinquent taxes, payments to the Equitable Building Association and other indebtedness and this plaintiff now makes formal tender of this amount, or whatever amount so expended by the defendant in the matter of the alleged transfer of this property.

4. Wherefore the premises being considered, said plaintiffs being advised that said deed having been obtained without valuable consideration, but upon the false recital of a valuable consideration and having been obtained under the aforesaid conditions of imposition practiced upon the said Mamie Logan by the defendant and by reason of Mamie Logan's lack of appreciation and understanding that the instrument so executed was in fact a deed to her home, that the said recorded deed now constitutes a cloud against the former title of Mamie Logan, affecting the interest of

all these plaintiffs as her lawful heirs, and wherefore the plaintiffs now pray that this Honorable Court enter a judgment ordering cancellation or rescision of the aforesaid deed, executed the 18th day of September, 1939, and further ordering an appropriate reconveyance of the said property from the defendant to these plaintiffs as the lawful heirs of Mamie Logan, and for the appointment of a receiver or collector for the purpose of accounting to this Court for such rents as have been collected from the aforesaid premises since the time of the unlawful occupancy thereof or control thereover by the defendant, or for such other appropriate relief as this Honorable Court may determine to be proper and adequate in the premises.

GEORGE E. C. HAYES

Attorney for Plaintiffs.

COBB, HOWARD & HAYES

Attorneys at Law

613-F-Street, N W

Washington, D C

By: George E. C. Hayes

* * *

5

Filed Nov 25, 1941

ANSWER TO COMPLAINT FOR CANCELLATION OF DEED AND RE-CONVEYANCE OF PROPERTY

The defendant in answer to the bill of complaint says as follows:

1. That he is not familiar with the allegations contained in the Paragraph containing the heirs-at-law of Mamie Logan, decedent, and can neither admit or deny the allegations, therefore he demands strict proof of their relation-

ship to the said Mamie Logan, and of their respective residences.

2. That for answer to Paragraph one (1), this defendant admits that Mamie Logan prior to September 19, 1939 had the title to Lot 106, Square 503, improved by a two story brick dwelling known as 1311 Union Street, Southwest, but says that the value of the same is grossly exaggerated by the plaintiff, and that it has a present market value of approximately \$2200.00, and is now encumbered by a first deed of trust to the extent of \$1300.00 or more.

3. That as to the allegations set forth in Paragraph two (2), this defendant denies that he importuned and obtained wrongfully from the said Mamie Logan the form of an absolute deed conveying all her right, title and interest in said property, reserving unto herself a life estate, but says that a deed was executed by Mamie Logan as her free and voluntary act, and as a result of her solicitation of this defendant to take care of accumulated arrearages with the holders of the first trust who were then threatening to foreclose the said property, the said Mamie Logan then being more than one year in arrearages, and in order to assure herself of a home and the benefits thereof for the balance of her natural life, induced this defendant to enter into an agreement, whereby he would avert a foreclosure, keep the property in a state of repair and habitable, pay all taxes and assessments, all for which, Mamie Logan promised and did execute a deed reserving herself a life estate and vesting a remainder in fee in this defendant, now on record as cited in Paragraph two (2).

4. That for answer to Paragraph three (3), the defendant denies each and every allegation contained therein, and says that the truth of the matter is as follows:

(a) That Edward Robinson had made arrangements to purchase certain lots located in Maryland.

(b). That in that transaction, as in the instant case, Rus-

sell Morris, a reputable attorney represented Mamie Logan.

(c). That the defendant herein, by virtue of this solicitation of a loan by Edward Robinson for the amount of \$200.00, came to know Mamie Logan.

(d). That as this defendant was advancing the money, and the said Edward Robinson was then on relief, this defendant, in order to secure himself, insisted that the deed to the Maryland property be made in his name.

(e). That the cost of the Maryland property was supposedly to have been \$400.00, \$200.00 of which was to be paid in cash, and the balance, \$10.00 per month in installments, all of which has been paid.

(f). That this defendant denies, specifically, that because of age, infirmity, or senility, that the deceased, Mamie Logan was helpless and unable to understand and comprehend the nature of the business transaction, and says to the contrary, that the said Mamie Logan was of sound mind, capable of understanding the nature of the transaction,
 7 and was capable of making a valid contract, and executing a deed, and no unfair advantage was taken of Mamie Logan, nor was any fraud or misrepresentation exercised upon her.

(g). That the defendant further says that he has made improvements upon the property, and has expended moneys far in excess of \$300.00 as set forth herein.

(h). That every affirmative allegation set forth in Paragraph four (4) is hereby denied.

WHEREFORE, the defendant prays that the above suit be dismissed, and that judgment be entered for the defendant.

OTHO D. BRANSON
 Attorney for Defendant
 604 D Street, Northwest
 Washington, D. C.
 Me. 2615

LEON S. CALHOUN

A Copy of the foregoing answer was this day mailed to Messrs. Cobb, Howard & Hayes, attorneys for the plaintiffs, at their office, 613 F Street, N. W., Washington, D. C.

Dated: November 25, 1941.

TIGNOR, PETERSON & BRANSON

By: Otho D. Branson

Attorney For Defendant

604 D Street, Northwest

Washington, D. C.

Me. 2615-2616

Filed Nov 13, 1942

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Jacobs, et al.

Plaintiff.

Calhoun

Defendant.

Calendar No.

Civil Action No. 11947

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

This is an action to set aside a conveyance of realty. The plaintiffs are the heirs at law of one, Mamie Logan, and contend that shortly before her death she made a conveyance to the defendant, of real estate owned by her; that at that time she was blind and incompetent; that she was in-

duced to make the conveyance through fraud and deceit and that there was a total failure of any consideration for the conveyance.

The defendant denies the fraud, and any failure of consideration and denies that the grantor was incompetent. He claims that he made certain payments for taxes and for arrearages to the Building and Loan Association, which was threatening to foreclose, and also made certain money payments on behalf of the grantor, for which he received a remainder only after the life estate of the grantor.

STIPULATIONS: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

Papers initialed by the Pre-Trial Judge may be received in evidence without formal proof, subject to relevancy.

Each side is limited to one expert on the question of the value of the real estate in question.

Each side is limited to one expert on the question of the decedent's competency to make a valid deed or contract.

Records of the Building & Loan Association may be received in evidence without formal proof, subject to relevancy. Records of the Tax Office may be received in evidence without formal proof, subject to relevancy.

November 13, 1942

BOLITHA A. LAWS

Pre-Trial Judge

GEORGE E. C. HAYES

Cobb, Howard & Hayes—Plaintiffs

O. D. BRANSON—Defendant.

• • •

292

Filed April 2, 1943

MEMORANDUM

May 14, 1943.

Order overruling motion for new trial, filed.

285

Filed March 4, 1943

JUDGMENT

Upon consideration of the Complaint filed in this cause, the Answer thereto, the testimony taken in open court, and the arguments of counsel for the respective parties, it is, by the Court, this 4th day of March, A. D., 1943,

ADJUDGE, ORDERED, AND DECREED: that the deed executed by Mamie Logan, dated September 18, 1939, and recorded in the Office of the Recorder of Deeds, September 19, 1939, in Liber 7390, at folio 393, to Leon S. Calhoun, be and the same hereby is cancelled, rescinded, and held for naught;

And it is further ADJUDGED, ORDERED, AND DECREED: that the plaintiffs herein, heirs at law and next of kin of Mamie Logan, deceased, pay to Leon S. Calhoun, as an adjusted figure after charging himself, the said Leon S. Calhoun, with rents collected by him from the aforementioned property, and crediting himself with expenditures made, the correctness whereof is asserted and attested to by the signatures of counsel for the respective parties endorsed hereon, the sum of One Hundred and Sixty-one Dollars and Sixty-one Cents (\$161.61); and that said Leon S. Calhoun have a judgment therefor, with the right of execution as at law; and that said judgment, until satisfied, shall be a lien against the aforescribed real estate.

By the Court:
T. ALAN GOLDSBOROUGH
Justice

Seen
OTHO D. BRANSON
Atty for Defendant.
GEORGE E. C. HAYES
Attorney for Plaintiffs

II

**EXCERPTS FROM TESTIMONY DESIGNATED BY
APPELLANT**

13 **STATEMENT OF CASE ON BEHALF OF
 PLAINTIFFS**

MR. HAYES.

* * *

The theory on which we are bringing this suit is that at
the time the conveyance was had Mamie Logan was blind
and incompetent and did not know at the time she
14 executed the mortgage note what she was doing, nor
was she in a position to make the decision as to the
property she was conveying. If we can satisfy Your Honor
as to that we will ask Your Honor to set aside the convey-
ance.

* * *

was called as a witness, and having been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q. And did you know during her lifetime Mrs. Mamie Logan? A. Yes, sir.

Q. And what was the nature of that acquaintance with her? A. Mamie Logan received aid from us. She was a client of the Public Assistance Division, received what we call general public assistance, or relief in general; subsequent thereto aid to the blind.

* * *

20 Q. Now did there come a time when you had any knowledge of any transaction in which Mrs. Logan was engaged with Mr. Calhoun? A. Yes, sir.

Q. Will you tell His Honor what that was? A. My recollection, if it serves me right, it was my duty to protect—

MR. BRANSON. I object to any added inference that it was his duty to protect.

MR. HAYES. I want you to just answer the question in a responsive manner.

THE WITNESS. Well, Mrs. Logan came to my office stating that her husband had owned some property immediately across the District line in Prince Georges County and that this property consisted of a number of lots.

MR. BRANSON. Your Honor, I am going to object to this further conversation by Mr. Schwarz because I think he became a witness on one of those contracts and was a party to it and I think our statute specifically prohibits any testimony from a person who is a party to a contract

entering into any transaction or who in any way becomes a party to it or engages in the giving of conversation between himself and the person who is now deceased.

21 THE COURT. I understand he was a counsel.

BY MR. HAYES:

Q. Did you represent them? A. As far as the Board of Public Welfare is concerned, yes, sir.

Q. I will go into that later. A. She came to me and explained that her husband owned a piece of property and also had a will which conveyed the property to her as sole heir. She also brought a notice from the tax office of Prince Georges County that unless the arrear in taxes was paid by a specific date that the property would revert to the county.

Q. That is with respect to the property that is in Maryland? A. Yes, sir; in Maryland.

Q. All right. A. She said what could we do. I suggested to her that the best thing for her would be to sell the property. She said she had somebody who would buy it. She subsequently sent someone by the name of Robins or Robinson—I do not recall the name—and he was a relief client.

THE COURT. He was what?

THE WITNESS. He was a relief client—Robinson, who came to me stating he wanted to buy this property. He told me he did not want to buy it for himself but he knew somebody who would purchase it and he sent Mr. Calhoun to my office. Mr. Calhoun agreed to pay \$200 and the balance in subsequent monthly payments.

THE COURT. How much?

THE WITNESS. \$400 total for the property for the unimproved lots, six in number.

BY MR. HAYES:

Q. Your Honor will understand that is not the property here in controversy. A. No. Mr. Calhoun was to pay me \$200, which I refused to accept, but I suggested to him that he proceed to Marlboro and pay the taxes in order to avoid the tax sale; which he subsequently did, and brought me a receipted bill. The balance was paid to Mrs. Logan.

THE COURT. How much was it?

THE WITNESS. The balance was \$200, if my recollection serves me right. \$139 and some \$60 that went to Mrs. Logan at that time.

BY MR. HAYES:

Q. Was any arrangement made for any monthly payments? A. Monthly payment of the amount—I don't recall—would be paid to pay off the balance to Mrs. Logan.

Q. Have you any knowledge that those amounts have ever been paid? A. I have not.

23 All right. A. Then Mrs. Logan and Mr. Robinson came to my office and explained that someone, she did not mention the name,--

MR. BRANSON. I am going to object to any conversation between him and Robinson as hearsay.

THE COURT. Who is Robinson, a lawyer?

MR. HAYES. No, if Your Honor please, Mr. Robinson was one who supposedly was buying this piece of property in Maryland. The understanding is that Mr. Calhoun was advancing to Mr. Robinson and Mr. Robins the money to make this purchase and he and Mr. Calhoun took title in his own name to that Maryland property. I think that is the situation by way of answer as well as my own impression in the matter.

THE WITNESS. And Mr. Robins came to my office and notified me.

MR. BRANSON. I object.

THE COURT. I cannot tell anything about it until I hear. I cannot pass on testimony until I hear it.

THE WITNESS. He notified me there would be a transfer of the Union Street property.

THE COURT. What is the Union Street property?

THE WITNESS. Other property which Mrs. Logan owned.

MR. HAYES. That is the property that is involved here.

THE WITNESS. Yes, sir. We immediately checked into the Recorder of Deeds and found that that property had been transferred to Mr. Calhoun. I thereupon subsequently went to see Mamie Logan at the hospital and was told by her that she had no intention of transferring that property; that she did not sign a deed and that she merely signed a paper for Mr. Calhoun who bought a lot in Prince Georges County.

MR. HAYES. Was she in your opinion—

THE COURT, (interposing). One minute; that testimony as it stands now is not admissible as to what she told you at this stage of the proceedings. It is purely heresay testimony.

MR. HAYES. Well, of course, Your Honor, we feel, and there is always a difficulty in this type of case because of the fact of the person being deceased, and under our rule of course the suggestion is that the opposing party cannot testify unless he is first called by the parties concerned in the estate, or unless testimony is given by the opposing party. I have always had a question in my mind as to whether under that phraseology of our statute as to whether or not it does not give us a right to open the gates. Now, admittedly when we open it, the opposing party may come in and offer testimony tending to show that the alleged transac-

tion was, but I think the rule provides where we as the ones representing the heirs see fit to give rise to it it is admissible.

THE COURT. On what theory is that testimony admissible?

MR. HAYES. Because of the fact that one of the issues in cause is as to this lady's condition of mind, as to
25 whether or not she was able to make a valid contract.

THE COURT. That is a different proposition. You have not raised that point yet. I am talking about her bare statement that she did not intend to convey the property.

MR. HAYES. Well as I say, I think that the statement as Mr. Schwarz testified here, which is here set forth, he testifies that he talked to her and she indicated that she signed no such instrument. I think it has probative force.

THE COURT. On what theory?

MR. HAYES. On the one which I have indicated.

THE COURT. I am not talking about that. I am talking about the admissibility of a bare statement that is here—say testimony isn't it?

MR. HAYES. Unless Your Honor will agree that under the theory I have just attempted to outline that it would be admissible, then Your Honor it unquestionably is inadmissible testimony.

THE COURT. That testimony is stricken from the record. If you want you can question about her mental condition.

BY MR. HAYES:

Q. Will you, Mr. Schwarz, give your opinion as to what was her mentality? A. Very flighty at all times.

Q. Do you know anything as to what her condition was

26 or any condition she had undergone immediately prior to the time of the transaction when there was a conveyance of this Union Street property? A. I think she had suffered from a diabetic coma.

Q. Was she, in your opinion, at the time the deed was executed, capable of making a valid deed of contract? A. Not in my opinion, sir, because she was ill in bed, suffering from diabetes.

THE COURT. How old was she?

THE WITNESS. May I refer to the record?

THE COURT. Yes.

THE WITNESS. Born June 8, 1873. At that particular time, in 1939, she was 68 years old.

THE COURT. What sort of assistance was she getting from your organization?

THE WITNESS. Under National Social, Title I, she was getting relief.

THE COURT. What was it?

THE WITNESS. A monthly stipend.

THE COURT. How much?

THE WITNESS. I will have to refer to this record; various amounts.

THE COURT. And then you say she got other assistance. What other assistance?

THE WITNESS. Previous to that she had received--previous to the blind condition she had received unemployment.

* * *

* * *

Q. Mr. Schwarz, in 1939 you had occasion to observe

Mamie Logan, didn't you? A. Yes, sir.

Q. And you had occasion to have conversation with her?

A. Yes, sir.

Q. Will you relate any conversations you had with her from which you draw your conclusion that she was not of such a mind that she could transact business? A. I could not relate the exact conversations, going back that length of time, because of my contact with so many, many people of a similar nature. I could not tell exactly, but I could only recall vaguely the manner in which she answered questions and I know that was always in a flighty
29 manner because she might repeat it two or three times in answer to the same question. That is a recollection.

Q. So, in your opinion, she could not carry on her business or any transaction. Is that the conclusion you have drawn? A. I also formed the conclusion because of the nature of the disease; mainly that she was suffering from a stage of the disease of diabetes and mentality was impaired.

Q. And that is your opinion of her mentality because of her condition? A. Yes, sir.

* * *

30 BY MR. BRANSON:

Q. But this is your handwriting, is it, of the contract? (Handing document to witness.) A. Yes, that is my handwriting.

Q. And you did not think she was so mentally incapacitated that she would not draw a contract for the sale of those lots? A. No. The reason for that, Mr. Branson, was because she was in imminent danger of losing them entirely by reason of the tax sale.

Q. And her capacity was sufficient then in your opinion to execute that contract? A. For her own protection it was advisable on these lots at that time.

THE COURT. When was that?

MR. BRANSON. That is September 14, 1939.

THE WITNESS. September 14, 1939.

31 BY MR. BRANSON:

Q. And the deed was executed as of September 18, 1939, the same year, and she signed that in your presence, did she not? A. Yes, sir.

Q. And she understood?

MR. HAYES. Just a minute. May I see that (examining paper). I have no objection to it.

MR. BRANSON. I want to have this marked for identification as defendant's exhibit 1. I will offer it later.

BY MR. BRANSON:

Q. Now, was there a time when it became necessary for her to probate a will? A. I believe it was; yes sir.

Q. And wasn't it at a time that you asked her to secure counsel? A. I believe that I suggested to her to secure counsel because of the need to clear the title on the property, if my recollection serves me right; yes.

Q. And a lawyer did come to you and discuss it with you? A. He did; Mr. Morris.

* * *

36 BY MR. BRANSON:

Q. Now, Mr. Schwarz, did there ever come to your at-

tention the fact that this Union Street property was to be foreclosed? A. Yes, sir.

Q. If so, when?

MR. HAYES. If Your Honor please?

MR. BRANSON. I want him to name the date as to when he starts.

MR. HAYES. I think you base it on a false premise.

First of all there must be something to establish the
37 the fact that there was any threatened foreclosure.

That is one of the issues in the cause. We expect to offer evidence, Your Honor, that there was never any suggested foreclosure, and to base a question on a false premise is of course wrong.

THE COURT. The Court thinks it is a proper question if Mr. Schwarz has the information and can testify.

BY MR. BRANSON:

Q. Did it ever come to your attention? A. That would be very difficult for me to answer because I have certain knowledge to know that even though she received a letter and brought that letter to me, there was no intent to foreclose.

* * *

41

MISS EILEAN BROOKS

was called as a witness for the plaintiffs, and having been duly sworn was interrogated and testified as follows:

* * *

Q. Miss Brooks, did you have occasion to know Mamie Logan? A. Yes, I did.

Q. And when did you come first to know her? A. I am not certain of the date because I do not have my record.

* * *

42 THE WITNESS. In the beginning we put her on general relief, while we were investigating for old age. We reviewed her case for old age in January. We reviewed the case in 1937 and we took her on in January or February of 1937.

THE COURT. Had she already been on general aid?

THE WITNESS. I am sorry. She came in to apply and we found she was not eligible for general relief in January. Then we put her on old age relief and put her on general relief in 1937.

THE COURT. How much did she get?

THE WITNESS. At the beginning we gave her \$20 a month with general relief.

* * *

43 Q. Directing your attention to around the middle of September, specifically the 18th of September, 1939, what would you say as to her condition of mentality? A. Why, she was not herself at all at that time, neither from about the first of August she wasn't herself.

Q. And upon what do you base your statement that she was not herself? A. Because she was in the hospital and she had to be taken out because she disturbed the patients.

MR. BRANSON. I am going to object to your conclusion unless she was there and heard her disturbing the
44 patients.

THE COURT. What hospital was she in?

THE WITNESS. Providence Hospital.

BY MR. HAYES. Did you have any personal knowledge

with regard to her condition while at the hospital? A. I was called and they told me she was disturbing the patients.

MR. BRANSON. I object to that because she said she was called and was told; it is purely hearsay.

THE COURT. Correct. Sustained.

BY MR. HAYES:

Q. As a result of this word what did you do? A. Well, later she was taken out of the hospital by relatives and carried home.

Q. And did you continue to see her? A. Yes.

Q. Was she at the time that I have referred to in your opinion, in September 1939, capable of executing a valid deed or contract. A. No, she was not.

Q. Did there come a time, Miss Brooks, when you had any personal knowledge of the business relationship between Mr. Calhoun and Mrs. Logan? A. Yes.

Q. What knowledge? Give me your personal knowledge.

What personal knowledge did you have of that
45 proposition? A. I would prefer looking in the record in my case because it has been quite a while ago.

Q. All right. A. It was in August 1939 that I first had occasion to know about this.

Q. You say "about this". What do you mean? A. About the transaction between Mr. Calhoun and Mrs. Logan. It was at that time that I contacted a Mr. Robinson and Mr. Robinson was then living in the 300 block of O Street, S.W., and Mr. Robinson then wanted to get some lots from Mrs. Logan for an interested friend, and it was then that I discovered that Mr. Calhoun was then really the interested party and wanted to buy the lots. He said he was willing to pay \$100 cash and pay the rest in monthly

installments, and he was sent then immediately to Mr. Schwarz.

Q. Is that all the record shows with respect to that transaction? A. It is a particular transaction. Later on in September something else happened.

Q. Yes? A. It was during that period too we found Mrs. Logan had neglected to pay her building and loan obligations and she had been sent a notice. Someone sent a notice to her because she could not pay and she thought it stated her property was to sold at once if she did not
46 make the necessary payments. She got at once in touch with Mr. Calhoun and he promised to pay if he could have a lien on the property.

Q. Did you have any personal contact with Mr. Calhoun about the property? A. About the house?

Q. Yes. A. Well, after we found out about the deed.

Q. Did you see Mr. Calhoun personally? A. I would have to look at my record to see that.

THE COURT. The Court did not say she could not refresh her recollection.

MR. HAYES. I understand, Your Honor.

THE WITNESS. During this month of September I did not see Mr. Calhoun. I tried to get in touch with him without success. I could not see him during that time.

BY MR. HAYES:

Q. Did there come a time subsequently that you, together with Mr. Burnett, went to see Mr. Calhoun—and Mr. Burnett? A. We did go to his house to see him. I cannot recall. We did talk it over. I do not remember exactly what we said because we closed our case after that and I did not put that in the record. We did go with Burnett to Calhoun after the time that this transfer was made, yes.

Q. Was there any condition from which Mrs. Logan suf-

ferred with which you had personal knowledge? A.

47 Yes, she had diabetes.

Q. And at or around the time of this transaction do you know anything about the conditions, about her condition of this diabetic situation? A. It was pretty bad, so much so that she had to be hospitalized.

Q. In that hospitalization was there any condition in which she was as a result of that diabetes that you know?

A. Will you repeat the question?

(The question was repeated by the reporter.)

BY MR. HAYES:

Q. Was there any condition as a result of this diabetes that she was in?

MR. BRANSON. I am going to object to that.

THE COURT. Of course she is not qualified to pass on that. Objection sustained.

The testimony of the witness as the Court understands it and she can say whether this is the testimony or not; that the patient was not herself, was not capable of transacting her business. She could say whether it was due to diabetes or what?

MR. HAYES. You may cross-examine.

CROSS EXAMINATION

BY MR. BRANSON:

Q. You did refer Mrs. Logan to the Public Welfare offices for the purpose of transacting business? A. Oh,

48 that was prior to August, prior to the time that she said she wasn't herself.

Q. Now as of September 14, 1939 she was referred to the office as capable of transacting business, wasn't she?

A. It was only because of these building and loan payments

which had not been paid and she was disturbed about it.

Q. Did she turn that letter over to you, the letter from the building and loan association? Did you make a memorandum of what that letter said? A. I only said as I read to you, as I started to read to you.

Q. I just asked if you made a memorandum of what that letter of the building association said? A. We put it in just as I read it before.

Q. You can answer it yes or no.

THE COURT. She is trying to answer it if you will let her. Go ahead and answer the question.

THE WITNESS. As I said before, she had neglected to pay the building and loan association and was sent a notice about this.

MR. HAYES. I want to say in fairness to Your Honor and the gentlemen that I have a gentleman coming in from the building and loan association and have him bringing in copies of their communications.

MR. BRANSON. That is all right. That is what
49 we want.

BY MR. BRANSON:

Q. As of September 14 she did to your knowledge execute a contract in Mr. Schwarz's office, didn't she?

THE COURT. Is that a contract or a deed?

MR. BRANSON. It is a contract, Your Honor, that she executed on September 14, 1939.

THE WITNESS. She came in and talked over these things about the lots.

BY MR. BRANSON:

Q. She was able to intelligently discuss the lots to that time? A. She talked about them and told us she had these

lots and put them in Mr. Schwarz's hands. She told us what she was going to do, she was going to sell them because of the taxes.

Q. She told you she was unable to keep them and pay the taxes? A. Yes, that is right.

Q. And the only way she was to pay the taxes was to sell the lots and get something for herself, wasn't that true? A. You must remember that during this time Mrs. Logan had been receiving relief and she had *not told* us about these lots, and when she told us she had these lots then she came in to *try* to pay. At this point something had to be done because she owed the taxes on them and they had to be sold to straighten it up.

50 Q. When you found out about the lots you then contacted Mrs. Logan and told her to come in, is that correct? A. Yes.

Q. And it was around September 14, 1939, that she came in to discuss the question of the lots? A. Just a minute—it wasn't September. It was before she had this illness that she first came in. She was at headquarters in 1939. Directly after that she had this illness.

Q. How long did she stay in the hospital after August? A. I am sorry, I do not have that here.

Q. In September was she in the hospital? A. For a while.

Q. Was she in the hospital on September 14? A. I am sorry, I could not answer that.

Q. Now you know Mr. Schwarz's signature when you see it? A. I think I do.

Q. I will show this (indicating and ask you if that is his signature. A. I want to compare it with a signature I have in this book. There is something peculiar about it. Yes, I would say it is his signature.

Q. And you notice the date of that (indicating)? A. Yes.

Q. Would you say she had sufficient capacity to enter into that contract then?

51 MR. HAYES. I object to that, if Your Honor please.

THE COURT. It is cross-examination.

BY MR. BRANSON:

Q. Would you say she had sufficient capacity to enter into that contract then? A. She must have entered into that contract at that time by requesting us to help her do something about that; this other that she had gone through—

Q. You believe then she had sufficient capacity then? A. Well because she wanted something done. She had already signed something with Mr. Calhoun before she signed that.

Q. Now, did you see her after she signed this contract on September 14, 1939? A. Yes, I did.

Q. When did you see her? A. I saw her the last of September.

Q. And what date was that? A. I do not have the date.

Q. Could you tell us approximately when it was that you did see her? A. The last I saw her was around the 19th of October.

Q. The 19th of October? A. Yes.

Q. And you did not see her from September? A. I
52 say the last time. I don't have the dates in September. I saw her after that. I am sorry, I summarized that contact.

Q. Now with respect to the month of September and after September 14 when you saw her, had there been any change in her condition? A. She was gradually going down.

Q. And that was a gradual thing, not something which

happened immediately? It was not a chronic thing?

MR. HAYES. Just a minute please. This question is "Was it a chronic situation?". This is a lay witness who is testifying.

THE COURT. The court thinks that in view of the testimony it is proper cross-examination.

MR. HAYES. All right, Your Honor.

BY MR. BRANSON:

Q. Mrs. Logan had been diagnosed as having diabetes, had you noticed any specific changes between 15th and the last you saw her, which you said was the latter part of September?

THE COURT. The latter part of October.

MR. HAYES. She said she was gradually getting worse.

THE WITNESS. Yes.

BY MR. BRANSON:

Q. In October when you observed her? A. Yes.

Q. Was there a pronounced change in the month of
53 October with respect to her mental capacity? A. Yes,
I told you from August she was gradually, she was gradually deteriorating; she was not herself.

Q. Now, the month of August, was she able to talk and transact business? A. During the month of August she really was not herself part of that month.

Q. But she was better in September? A. She was able as I said, she was able to talk with us about things which she had done.

Q. And she was able to say what was necessary to be done with respect to her property. Isn't that correct? A. After she got herself into this she said she wanted certain things done, but—

Q. But—

THE COURT. Do not interrupt the witness.

THE WITNESS (continuing). But she had signed papers that she did not seem to realize she had signed. She told us that she thought she *owed money* in the *building* and *loan* and she signed some papers over to Mr. Calhoun.

BY MR. BRANSON:

Q. And what month was that in? A. That was in September.

Q. And she also discussed the question in September concerning property in Maryland? A. Those
54 were lots, yes.

Q. But she was able to transact that business. That is true, isn't it? A. She did, but she was very weak.

Q. But she knew what she was doing?

MR. HAYES. I object to that.

THE WITNESS. I could not say. She did direct it through.

BY MR. BRANSON:

Q. Did she tell you in discussing the lots how much she wanted for them? A. At that time Mrs. Logan was in trouble because she had been *receiving money* from us *without letting us* know she had the *lots*. We were doing all we could to help her out.

Q. She had sense enough to try to get out of that trouble, didn't she?

THE COURT. Let her finish.

THE WITNESS. We did all we could. Someone came with her when we did that and this other person kept all her bank books and was with her right there.

THE COURT. Who was that?

THE WITNESS. Mrs. Venney.

MR. HAYES. She will be a witness.

BY MR. BRANSON:

55 Q. As of August, how much relief was Mamie Logan getting from your society? A. The month of August?

Q. Yes. A. Just a minute. It was cut back and forth so. I do not know whether we have that in here or not. Oh, yes. \$22 was approved. No, wait a minute. I am sorry. I am not right now in my record. I cannot go straight through it because I haven't been through it for some time.

Q. Take your time. A. We did; during the month of August we temporarily discontinued relief.

Q. When did you first discontinue that relief, according to your record? A. Just a minute. Oh, yes. I am sorry, I cannot answer that question right now.

Q. Would you say it was more than two months prior to August, 1939?

MR. HAYES. What was more than two months?

MR. BRANSON. That she was actually cut off and had not received money.

MR. HAYES. Had she testified to that?

MR. BRANSON. Oh, yes, she testified she was cut off and not receiving money in August.

THE WITNESS. I am sorry. Wait just a minute. You see part of our record is kept by the financial department and part of that is not here. I am sorry I cannot answer you.

56 BY MR. BRANSON

Q. Now the financial department is in the same building you come from? A. No, I have been away from that office for some while.

Q. Where is the financial office located, for my reference.

THE COURT. Whose office?

MR. BRANSON. She turned it over to the financial office.

THE WITNESS. Second floor, 460 C Street.

MR. BRANSON. Did she receive any money from the association in the month of September?

THE WITNESS. I am sorry. I would not like to answer that.

MR. BRANSON. That is all.

(Witness excused.)

* * *

57

MILTON R. JOHNSON

* * *

CROSS EXAMINATION

* * *

Q. Will you tell us, sir, as to whether or not a reference to that record discloses communications sent by your office to Mrs. Mamie Logan with respect to arrearage?

58 A. Yes, sir; I have some correspondence to that effect.

Q. Will you indicate the date of that correspondence and as to what the tenor of them is? A. Letter of January 30, 1936 addressed to Mrs. Logan, 1311 Union St., S. W., signed by our Secretary, Mr. Edward L. McAleer. "Please call and see me in regard to your loan."

MR. HAYES. If Your Honor please, I take it there are a number of communications. I take it Your Honor would be interested in those only approximately near this situation. If Your Honor feels differently I will read only those

that are pertinent. However, suppose you read them all to show if there is any.

THE WITNESS. June 5, 1936: "Please call and see me in regard to your loan." And here is a footnote of June 11. We make a note and each one of these letters of arrearage shows what the action has been. Mr. McAleer put on "Sick, unable to work, depends on brother to help. Will be back on July 1." Now our letter of July 1, 1936, that was in regard to the former loan. This loan took effect 23 October, 1936. One of the first letters in reference to the refinancing of \$1400 of October 23, 1936. The first letter was January 11, 1937: "Please call and see me at once in regard to your loan." Signed by our secretary "Mr. McAleer."

February 9, 1937: "We must ask that you arrange to take your loan out of our association. Arrangements
59 must be completed within 30 days."

THE COURT. When was that?

THE WITNESS. February 9, 1937. It is the custom of our association; if it please the Court I would like to make one statement, that if we find after talking to these clients of ours that the monthly payment is too great we render every assistance we can in putting a straight loan on to relieve them of interest and payment and that is why we say "the loan has to be taken out of the association."

MR. HAYES. That was in 1937?

THE WITNESS. 1937, February 9.

MR. HAYES. All right.

THE WITNESS. The next correspondence is of August 13, 1938. "If any further payments are missed on your loan we will have to ask you to take it out of our association," which meant that we accepted in the interim the payments as satisfactory. We realized the condition of Mrs. Logan and we were very lenient in her behalf.

BY MR. HAYES:

Q. What did you mean by "you understand"? A. We understood she was blind, and we understood she had very little income. Those statements were made to our secretary, Mr. McAleer, and I recollect she was getting some assistance from the Public Assistance in the District on old age pension, and I have received these checks at the window.

60 September 12, 1939: "Please call at once in regard to your loan." There is a notation "Paid".

Q. September 12, 1939? A. That is the last letter we have in this correspondence.

Q. So as of September 12, 1939 the only thing that is there is a notice that you sent to her to come in and at the bottom you have a notation "Paid"? A. Mr. McAleer marked "Paid".

Q. Was there any time that your office threatened to foreclose on the property? A. No, there is nothing in the record anywhere.

THE COURT. What was the last letter prior to September 12, 1939?

THE WITNESS. The letter prior to that, the 13th of August, 1938.

MR. HAYES. Is there any between those?

THE COURT. Is there anything between August 1938 and September 12, 1939?

THE WITNESS. Payment was made in September 1938. Now is November of 1938 we agreed. I know about this because I am connected with the tax department. We agreed to accept \$5.00 a month whereby the association would pay the taxes when they became due. That would relieve her of the tax burden because these taxes had been

paid by us several times and after running a couple of years. I will continue about these payments.

61 November 1938 was first payment \$19; December 1938, \$19; and every month thereafter, January, February, March, April, and May of 1939, all those payments of \$19 were made regularly, applied to interest and balance to taxes we had paid. That is the last payment to September 1939, which was May of 1939. Now I have run a table to show the actual amount of arrearage on payments that were due to September 1939, of \$17, which was \$563.58. It required monthly payments of \$490 and 63.40 taxes paid, and \$5 was credited in the tax book for starting the credit because in the Mutual Insurance Company it was the policy to have a Government loan of \$1.73 for three years. It is customary that we pay that insurance. That is a total of \$563.58 due to September 17, 1939. The payments were \$306 and pro-rated tax was \$35. That left in *arrearage* the *sum* of \$222.58 to the 17th of *September* 1939.

BY MR. HAYES:

Q. Now, with respect to that arrearage that I understand, Mr. Johnson, your company neither by letter or any other way insofar as you know never made any threat of foreclosure nor had any intention. A. None whatever. If there had been it would have been a letter addressed to our trustee, the Washington Loan and Trust Company, that they should foreclose. That is what is done more or less as a scare to the bondholder because we have to wait ten days to hear. That is sent by registered mail. There is no

62 correspondence to show that we ever turned the deed of trust over to the Washington Loan and Trust Company.

Q. And therefore there was no threat of foreclosure at

any time? A. There was no threat of foreclosure at any time.

Q. I think you said as a matter of fact that the policy of your company would be in the event you saw fit to remove this loan that you would arrange for a trust. A. We have allowed everybody to take the loan out of our association before attempting foreclosure. I know of only eight or ten cases of foreclosure which we had in our office. We just don't like them and do not want them.

Q. And from August 1938 to September 1939 was the only time any went forward? A. That is right. We had this loan since 1926. The first loan was \$1600. We readjusted in 1927 on a \$2,000 basis. There was property repaired. I have bills in here but they do not concern this last loan. \$1,300 was refinanced as paying up the balance of the \$2,000 debt and giving some balance money in 1935, on the \$1,300 basis, and this last advance on October 13, 1936 of \$1,400. We would never have made this advance if payments had not been satisfactory to the association.

Q. So, during the entire time this loan was with the association, payments were satisfactory to you? A. Yes, sir; they were satisfactory to us.

63

CROSS EXAMINATION

BY MR. BRANSON:

Q. Up to September 1939 there was an arrearage of \$200—some? A. \$222.58.

Q. How much of that was taxes? A. We paid \$63.42 in taxes, and \$35 was already paid by additional payments of \$5.00, leaving \$28.42 balance due on taxes.

Q. Now in the month of September there came a time when a payment was made after the 18th, and if so, for how much? A. We have a credit. Our month goes to the 17th. Payments made on the 18th of September to 17th of

October. I will have to add these figures. \$108.81 if I have added it correctly.

Q. And do you know by whom those payments were made? A. I could identify it if I had the pass book, I could identify who took it.

Q. I don't have that now. A. Five or six people might take payments on the window. Even our president accepts payments there.

Q. You would not know who brought those payments there. A. I know who had been paying on the account in recent years.

Q. Who had? A. The people to whom the property is now assessed. I could not identify the man unless I could see him. Leon S. Calhoun is the name in
64 the assessment of the property, subject to life estate of Mamie B. Logan.

MR. BRANSON. That is all.

MR. HAYES. No further questions.

THE COURT. You say Mr. Calhoun has made payments within the past two years, and whoever is paying they are Mr. Calhoun's payments?

THE WITNESS. If I could see who made the payments I could identify him.

MR. BRANSON. This (indicating) is Mr. Calhoun.

THE WITNESS. I do not know whether he is the man or not. I really could not say.

* * *

69 MRS. MATTIE B. BURNETT

78 CROSS EXAMINATION

80 Q. Now, previous to September and October 1939 she had been in the hospital, had she not? A. Yes,

sir; and I went to see her every day she was in the hospital.

Q. Every day? A. Yes, sir; every day, and the nurses and doctors will tell you that I was on good terms.

Q. Did she ever discuss with you the question of the selling of the lot? A. Yes, sir.

Q. And she told you how much she was getting for them?

A. Yes sir.

81 Q. Did she ever ask you to pay the taxes? A. She asked me to buy the lot and I did not have the money. We did not know what the taxes were.

Q. You did not want the lots? A. No, we did not have the money to buy the lots. She wanted \$800. I did not have \$800. My husband was sick and I did not want to move in the country. I have my home.

Q. Did she offer it for a cheaper price than \$800? A. No, first she asked \$1,000 and cut \$200 off and said I could have it for \$800, and then before we knew it she took \$200 more off.

Q. And then you could not make the deal? A. No, she was going to sell it to somebody else and make the deal. Neither of us wanted to live in the country. So she was going to sell to somebody else, and that is how these people got in on it.

Q. And you always furnished money and everything she needed? A. If she wanted medicine I took money out of my pocket and filled her prescription and brought it to her.

Q. Why was it she needed assistance? A. That was before we took charge.

Q. When did you first commence to take charge? A. After we found she was off relief?

82 Q. When did you find she was off relief? A. After she came out of the hospital.

Q. When was that? A. I don't remember.

Q. That was after September when you found she was off relief? A. I cannot remember what date she was off

relief. I want to tell the truth. I do not know when she went off relief, and came from the hospital.

* * *

85 Q. She never permitted you to intermeddle in her business? A. She had told, she said she had a lawyer, Mr. Morris and he was attending to her business.

Q. Mr. Morris was attending to her business? A. Yes, and I did not transact anything for her.

* * *

86 RE-DIRECT EXAMINATION

* * *

88 MR. BRANSON. Your Honor, I want to make a motion to strike the conversation between her and Mr. Robinson, which is purely a hearsay matter.

THE COURT. You renew your motion at the end of the testimony. I do not know if Mr. Robinson may or may not be connected up here. I cannot tell. That is why I let it in subject to further inquiry.

* * *

107 DR. ELTORE DE FELIPPIS

was called as a witness, and having been duly sworn in turn examined and testified as follows:

DIRECT EXAMINATION

* * *

Q. Will you state when she was first admitted to the hospital? A. She was admitted on three different occasions. The first time on November 11, 1939.

THE COURT. November 11?

THE WITNESS. That is right, November 11, 1939; the second time—do you want when discharged?

MR. HAYES. Yes, sir.

THE WITNESS. She was discharged the first
108 time on December 11, 1939. The second admission
was on January 29, 1940 and she was discharged
February 2, 1940.

The third admission was on February 21, 1940 and she was discharged on March 19, 1940.

BY MR. HAYES:

Q. So she was admitted in November 1939, January 1940, and February 1940; is that right? A. Yes, sir; February 1940.

Q. And at the time of her last admission she died before she was discharged? A. She died in the hospital.

Q. Will you tell us what the record discloses as to the reason for which she was admitted?

MR. BRANSON. I object, Your Honor, it comes within the meaning of the statute.

THE COURT. Let me see it.

MR. BRANSON. And we also have cases in the Court of Appeals on it, the Court has held that is it not admissible to disclose the diagnoses, and there are annotations (handing book to the Court).

MR. BRANSON. And then we have the case of Thomp-

son vs. Smith, 70 Court of Appeals, D. C., page 65.

THE COURT. Let me read it.

(Mr Branson hands volume to the Court).

109 MR. HAYES. If Your Honor please, with respect to the statute, I may call your attention to the fact that in my opinion under that section, it is neither the intent nor is it possible to bring it within the purview of the language of what is here attempted to be done. The code reads:

“In the courts of the District of Columbia no physician or surgeon shall be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its nature, which he shall have acquired in attending a patient in a professional capacity and which was necessary to enable him to act in that capacity, Etc.”

Here is the situation, of course, that we cannot get the consent of the person afflicted because that person is dead. But we come in raising the issue of that person and therefore we come in and say we desire this information. Here is the information. There is the decision, and it would seem to me an entirely atrocious situation where we are here crying that she has been taken advantage of because of the condition of her mind and yet we would be precluded from offering testimony showing the true condition of her mind.

THE COURT. Legal representative means executor or administrator.

MR. HAYES. I think that is correct, but I think legal representative, that is exactly the situation we have here.

110 THE COURT. You better look at that case and see what you think of it. It refers to the Hutchins case, (Hutchins v. Hutchins, 48 app. D. C. 495). It seems to the Court when you come in Court you ought to be prepared to argue when you come in. “Legal representa-

tive" means executor or administrator. That is what it means.

MR. HAYES. I say to Your Honor, this has to do with a person who must himself consent, or his legal representative—

THE COURT. But the "legal representative", when he is dead, the legal representative means the executor or administrator.

MR. HAYES. If Your Honor please, that is correct, but this statute as I interpret it does not have to do with the question of a deceased person. It does not speak that way.

THE COURT. You are mistaken. Look up the law before you come into Court. I am confronted with that situation all the time. That case expressly says "legal representative" can waive the provisions of the statute and it appears to say that legal representatives mean executors and administrators. That is what it means.

MR. HAYES. In this instance that was a question where there was a case and where there was an executor and an estate.

THE COURT. What is the difference? I admit that if you could give an authority as to a legal representative within the purview of this statute you are right, but you haven't done it yet.

MR. HAYES. I say to Your Honor it is a question of phraseology. I have always understood that
 111 where we speak of a person's representative that does not mean an executor or an administrator. Your Honor says I am wrong. It has been my understanding that the decisions were framed along that line. We speak about bringing in the record from the hospital. We discussed at the time of the pretrial that question, and I had no intimation that there was any question or cause for inadmissibility, and I candidly do not see the propriety of the sug-

gestion that here where we come in as heirs of the deceased person and where the issue before the Court is a question of competency and where we offer testimony attempting to show incompetency by the hospital records within one month of the time the instrument was executed by her, Your Honor it seems to me to be entirely within all the law conceivable.

THE COURT. Have you ever looked up any law or drawn your own conclusions from the statute? There are cases in the Court of Appeals having to do with it. I haven't looked into it for several months. There are cases which do indicate it but nobody has taken the trouble to investigate it, although the conclusions of the case are involved in this testimony.

MR. HAYES. Your Honor asked if I have looked it up. The reason why I have said to Your Honor what I have is that I have always understood an interpretation of that statute is that a legal representative carried what I have
 112 here, and I am certain that the citations will support it. I did not find or bring in any citations because I did not have any anticipation that question would be raised.

THE COURT. Have you anything in support of your medical testimony? If not, you will have to adjourn and give us all a chance to find what the situation is.

MR. HAYES. I have nothing but this gentleman and the psychiatrist who would base his opinion on what the hospital reports; then I have an expert as to the real value of the property.

THE COURT. The Court thinks that the testimony should be admissible. The Court also thinks that beyond any possibility of a doubt, legal representatives in a technical sense means executor or administrator and nobody else. Whether it should be stretched to mean anything else

is a question. A legal representative does not ordinarily mean an heir at law.

MR. HAYES. A legal representative has to do with a deceased person.

THE COURT. Yes.

MR. HAYES. The question of all property of the deceased has to do with the deceased person.

THE COURT. I do not know about the language.

MR. HAYES. That is what the language says.

THE COURT. Let me look at it.

MR. BRANSON. In the case of *Stafford vs. American Security & Trust Company*, 60 App. D. C., p. 380, it
113 says: "Testimony of physician attending testatrix inadmissible; confidential relationship presumed; tender of proof out of presense of jury."

THE COURT (to Clerk). Get me 60 App. D. C.

MR. BRANSON. Then there is the case of *Kaplan vs. Manhattan Life Insurance Co.*, 71 App. D. C., page 250, where: "A properly authenticated hospital record of patient's name, address, age, and the like is admissible, provided there is no disclosure of diagnosis or treatment." That shows how far you can go. It is outstanding.

MR. HAYES. Your Honor, if I remember that case correctly to which he refers, that is not an instance where there is a reference to a deceased person, and bringing in records. That is my recollection of that case.

THE COURT. If you have looked at those cases, Mr. Hayes, I will hear you.

MR. HAYES. If Your Honor please, I have read in a casual way, by reason of the limitation on time which I have to address myself to the particular thing which seems to be a point, it seems to me that all of those cases that it brings in the terms by saying as to whether or not the question of the lawful heirs of a person can be brought within the phraseology of a legal representative. They go

on to say in those cases, for instance, where there is an executor who has been appointed, that is one thing, but until he is appointed he is only the representative by that name, and until he is actually qualified he himself
 114 would not be able to waive the privilege. The entire thing goes back to the purpose of the statute.

THE COURT. Who would be the next of kin in your clients in this case, as being legal representatives?

MR. HAYES. I think if Your Honor please: The comment in one of the particular cases, they make the suggestion that if this were not an allowable circumstance for a legal representative to be within the purview and if they have not the right to fix the circumstances then it might be given to someone who is an entirely detached party, a corporate entity or an executor which would give the right against people who were next of kin, and inferentially unquestionably the question is for Your Honor; and the other cases go on to say what shall be done, and there shall be a tender of proof.

THE COURT. It is for the Court to determine whether the tender of proof comes within the prohibition or not.

MR. HAYES. That is right.

THE COURT. Not whether they are legal representatives.

MR. HAYES. That is just the point that I am making, that the very purpose of it seems to be that.

THE COURT. I admit the fact that the statute is not logical and it does not agree with common sense. We have plenty of crazy laws.

MR. HAYES. Yes, I suppose that is true, but in my opinion this law with connotation of the words that
 115 says "The person afflicted, or of his legal representative," does not contemplate that.

THE COURT. It means a certain person.

MR. HAYES. And they are all his legal representa-

tives. Doesn't that "or of his legal representative" tie back to the question that it is not the afflicted person? It says "the person afflicted, or of his legal representative."

THE COURT "Legal representatives" technically means the executor or administrator. That is what I find, and that is what it does mean, and I do not know of any authority that says a legal representative means anything else.

MR. HAYES. Of course, I must be guided by Your Honor's ruling. I said to Your Honor in my opinion I want to make a proffer for the record and offer the testimony.

THE COURT. I was in hopes I would get some help. I cannot get it.

I rule it is admissible in order to go ahead. I think it should be admitted and always thought so. I was in hopes this morning I would get some assistance.

MR. BRANSON. Your Honor is ruling it is admissible? Notwithstanding the fact that our statutes have taken the position that it is not admissible?

THE COURT. The Court thinks that "legal representatives" should mean heirs at law.

116 MR. BRANSON. Your Honor, they have a case in the Court of Appeals.

THE COURT. Where is it?

MR. BRANSON. All these cases.

THE COURT. The Court rules that unless you want to be heard some more that the testimony is admissible. The Court will hear you further.

MR. BRANSON. On the question of who is the personal representative of the deceased person and the person who owns this property or who owned this property certainly is deceased and the person whose record is sought to be admitted here is deceased is within the purview of the statute, and the Hutchins case holds.

THE COURT. The Court knows exactly what you are going to say.

MR. BRANSON. And the executor or administrator is the only one who can waive it. In other cases where we tried and raised the same question, usually a disinterested person has been named, and Judge Laws has ruled the same way on that. The heirs at law and next of kin does not mean anything.

THE COURT. This has been in the Court's mind for months and each time I have a case I try to nag counsel so that I can get some light and I cannot get it, so I will rule and say I think it ought to be.

MR. BRANSON. You are going contrary to the
117 Court of Appeals.

THE COURT. I do not agree with them or I would not have so ruled. The Court has examined all the authorities and many more and the Court of Appeals has never ruled of this question.

MR. BRANSON. The caveator and caveatees are certainly next of kin and they have to be to be caveatees.

THE COURT. A caveatee does not have to be an heir at law.

MR. BRANSON. The caveator does in order to qualify and the question has arisen only where there has been an executor or some administrator. There has never been a ruling.

THE COURT. The Court is thoroughly convinced of what should be and the Court of Appeals, if they have a different view, will have to pass on it and it will settle it.

BY MR. HAYES:

Q. Doctor, will you by reference to your record, with reference to the first admission, show what the record shows as to the reason for the admission. A. Patient was ad-

mitted because she was an impending diabetic coma, in a state of impending coma due to diabetes.

Q. And that is the admission as of November? A. November 1939.

Q. And when was she discharged? A. December 11, 1939.

Q. That was exactly a month later. A. Exactly a month later.

118 Q. And I take it what was the treatment given for that condition? A. Diabetic diet in conjunction with insulin.

Q. With insulin? A. Yes, sir.

Q. She was again admitted in January, on January 29, I believe? A. The second admission was January 29, 1940.

Q. The other was in 1942; the first was in 1940 wasn't it? A. In 1939.

Q. That is right, November 1939. A. Yes, sir.

Q. This was '40; this was in January, 1940. What was the reason for that admission? A. The reason was that she was suffering from diabetes.

Q. For how long a period of time was she there on that occasion? A. She was discharged on February 2. That would be just about a few days, about four days.

Q. And I take it the treatment was about the same with respect to that condition? A. Yes, sir.

Q. All right; will you tell us about the third admission?

A. The third admission?

119 Q. Yes. A. The third admission was on February 21, 1940. She was admitted under authority of the Department of Health for mental observation.

Q. And what do your records disclose as to where she was at the time sent and as to what the treatment was which she was then given? A. She was sent directly to Gallinger and placed under mental observation.

Q. Is that a separate ward? Is that a ward for insane persons? A. The Psychiatric Ward.

Q. The Psychiatric Ward? A. Yes, sir.

Q. And she was confined there from when? A. February 21, 1940.

THE COURT. Is Gallinger Hospital a general hospital?

THE WITNESS. Yes, sir.

THE COURT. The first two admissions were not due to insanity, is that correct?

THE WITNESS. Yes, sir; the first two admissions were not due to insanity.

BY MR. HAYES:

Q. But were due to a diabetic condition? A. Yes, sir.

Q. And the third admission was due to insanity
120 and she was confined to a ward?

* * *

123 DR. ERNEST Y. WILLIAMS

* * *

DIRECT EXAMINATION

* * *

124 Q. Now, Doctor, if there is a person 65 years of age—I am about to lay a hypothetical question on the testimony.

MR. BRANSON. Go ahead.

MR. HAYES. If there were a person, Doctor, 65 years of age, who in March of 1940 was found to be of unsound mind, suffering from cerebral arteriosclerosis and cerebral hemorrhages, and that person also gave a history of a diabetic condition covering a period for a year or two prior to that situation, and if in the month of September of the year previous of the adjudication having been in March

1940, that person at that time and the time just prior to that as far as the people with whom she came in daily contact evidenced certain peculiarities, crying spells, inability to coherently carry on conversation, suggested lack of memory and other things that would so indicate to these people who are lay people that the person was, to use the common parlance, insane and not able to carry on and execute a valid deed of contract, would you, Doctor, be able to say whether or not that person who was so adjudicated in March of 1940 was in September of 1939 in a position to execute a valid deed or contract?

MR. BRANSON. I am going to object to that question on its basis; first there has been no proof in evidence
125 that this woman is 65 years old.

THE COURT. She was born in 1873.

MR. HAYES. It was testified in the record.

MR. BRANSON. That was in the relief record. I will pass on from that particular point to the question of crying spells and I contend that at no time was there any testimony with respect to any incoherent testimony. The testimony was that she was able to discuss the question of business in 1939; that she even at that time offered for sale to her brother's wife a piece of property; that she went to the relief office and proved that she was able to talk to them and discuss it. Not only that, but she was able to enter into a contract with Mr. Schwarz, a witness. She was able to discuss the question of a title.

MR. HAYES. In my statement of a hypothetical question it does not mean that I mentioned or covered all the testimony.

THE COURT. In a hypothetical question you are supposed to put everything. The Court definitely doubts whether there is any testimony in this case on which you can base a legitimate opinion as to whether in September 1939 she was incapable of executing a valid deed of con-

tract. The witness are so indefinite as to when this condition existed. They testified, and I think Mr. Burnett testified that it was after she went to the hospital the first time she was in this mental condition and then we find she went in November. We thought she previously went the first time in the summer, and the question is whether
 126 there is anything on which a judgement can be based.

MR. HAYES. Each one of the witnesses specifically testified by August or September. They were of the opinion from their lay contact that the person was not of sound mind or not able to make a valid deed or contract. There was testimony with respect to crying spells, and testimony with respect to conversations despite what my friend says about it. Mrs. Burnett said that she would begin conversations and ramble and start talking about something else. All that was part of the testimony.

I want to show by the expert, if I can show by him, that the condition, she having been adjudicated insane as of a particular time, that by reason of his expert knowledge of this disease when she made this contract she could not have been of a mind capable of making a valid deed or contract. I have testimony. If he is capable of testifying to that circumstance then unquestionably it would seem that that is all Your Honor would desire to have known.

THE COURT. The Court has got to use some judgement about it.

MR. BRANSON. Will Your Honor indulge us for a minute?

THE COURT. Yes, To the Court the testimony is very vague as to when these conditions existed. It is very vague.

MR. HAYES. The record will disclose that Mrs. Burnett assisted.

THE COURT. She said in answer to my question
 127 that she carried meals to her but also testified it was
 after she was taken to the hospital the first time, but
 it could not have been in August or September if she went
 to the hospital.

MR. HAYES. The testimony is that such a time back
 two or three years ago and the question as to whether it
 was before or after would not disturb the possibility of
 Your Honor's ruling that these things specifically testified
 to occurred at or around when this contract was entered into,
 which is a part of the evidence.

THE COURT. The testimony is very indefinite in the
 mind of the court. That is the thing as to whether there
 is grounds. If this psychiatrist could say that a man was
 insane in 1940, and was also incapable of executing a valid
 contract in 1910, the court would not be bound by it.

MR. HAYES. All of this testimony puts it within a
 period of six months at the most.

THE COURT. You do not catch what the Court means.
 The Court has to assume some judgment as to whether the
 physician's statement is testimony at all.

MR. HAYES. I know that is Your Honor's position.

THE COURT. I do not think the question is proper. I
 do not think the question included all the evidence neces-
 sary.

MR. HAYES. I am perfectly willing to have the ques-
 tion incorporate any particular thing that counsel suggests
 or that Your Honor feels ought to be made of it. I
 128 want him to have a full picture.

THE COURT. The Court's ruling is that the
 testimony offered is not of a quality that makes it possible
 for a physician to express an opinion as to whether or not
 on September 18, 1939 the deceased was capable of execut-
 ing a valid deed or contract and therefore sustains the ob-
 jection.

* * *

135

RUSSELL MORRIS

* * *

DIRECT EXAMINATION

BY MR. BRANSON:

Q. What is your full name and address? A. Russell Morris, 245 Florida Avenue, N. W. I am a practicing attorney and member of the Bar of the District of Columbia.

Q. And how long have you been practicing? A. I was admitted to the Virginia Bar in 1927 and the Maryland Bar in 1933, member of the local Bar since 1933, and a member of the Federal Bar say since 1928 or 1929.

Q. Did there come a time when you represented Mamie Logan? A. I did.

Q. When was that? A. Some time around about September 1939.

Q. And what was the occasion for you to represent her? A. I received a call from one, a man by name of Schwarz, who was connected with the Old Age Assistance Bureau, to call him. So that was it.

136 Q. And that was the transaction that you had with Mr. Schwarz? A. As a result of his phone call I went to his place of business at 5th and H Sts., N. W. That was the first time I ever saw Mr. Schwarz and there that afternoon at about two or three o'clock he informed me that one Mamie B. Logan, whom I did not know at that time, and one Leon S. Calhoun, and I think someone by the name of Eddie Robinson had been to his office and that he had written up an agreement whereby Mrs. Logan was to sell several lots somewhere out in Prince Georges County, Mary-

land for the sum of \$400, I think to Leon E. Calhoun and that Mr. Calhoun had left with him the sum of \$200 to pay back taxes on the property. The taxes had not been paid for years and that the courts of Prince Georges County had threatened to sell and give a tax deed. So I informed him that I did not care to pay the taxes but that I would probate the will and that was mentioned and that was what he sent for me. So I left there; then I think the next day I returned and I think Mr. Schwarz handed me the balance of \$200 which amounted to about \$33 and some cents in that neighborhood. So then I proceeded to see Mrs. Mamie Logan to get the facts necessary to prepare a petition to probate the will and get the title in her for these lots so that she might be able to deed them to whoever purchased.

Q. Can you tell us specifically what year and month it was you talked with Mamie Logan, that you trans-
 137 acted business with her? A. September 1939. The petition to probate the will in the District of Columbia—the petition was executed by Mrs. Logan on December 27, 1939.

Q. And was she able to carry on a conversation with you and transact business, and did she know what she was doing?

MR. HAYES. I object to the question.

THE COURT. It is too general.

BY MR. BRANSON:

Q. Did she discuss the question of probating the will with you? A. Yes.

Q. What did she say by way of conversation? A. I went there and told her who I was and I had been sent to her by Mr. Schwarz of Public Assistance; that I was to probate this will and I wanted to get from her certain facts as to who the heirs at law and next of kin of her husband were

and the time that he died and where the witnesses to the will were. She remembered that and gave me the information. Some of the people lived out in New Jersey and I believe Chicago. Anyhow, several lived out of the District and she was able to give me the names of them and where they lived.

Q. Then did there come a time when there was a discussion with her concerning this Union Street property? A. Yes, a discussion concerning the Union Street property was somewhere about around about the 16th or 17th of 138 September, 1939. Now mind you, the thing—the petition that was executed on the 27th of December, 1939 and probated the will in the District of Columbia, that was executed some time after I had seen her in September. Of course it was necessary before I could do it to find the witnesses to the will and to have them go to the Courthouse and identify the signature to prove the will; and further in respect concerning the transaction about the premises in which she lived, 1311 Union Street, S. W., I think is the number, I went there I think three or four days after I saw Mrs. Schwarz on the 12th of September, and while I was in there getting this information she brought up the discussion that the house was in jeopardy and she had received a letter from the Equitable Building Association demanding the money and then I went into the details as to her circumstances and found out conditions. Having already been told by Mr. Schwarz in his office at 5th and H Streets, N. W., that she had been on relief prior to that time, because she had received \$400 some odd prior to that time and had committed a fraud on the District of Columbia and the old age pension system in not reporting the same to that assistance and that it would be at least November 1939 before she could be put back on the relief, if ever, and that she had been drawing a pension of \$39 a month, that he said was the blind pension—

THE COURT. \$39 a month?

THE WITNESS. Yes, sir.

* * *

143 Q. Did there come a time when you had a conversation with Mamie Logan and Mr. Calhoun concerning the Union Street property? A. That is right.

Q. And what was that conversation, and when was it?

A. That was, I think, the day before the deed was executed.

Q. All right, and what was that conversation? I will show you the deed to refresh your recollection on the deed.

A. I know the date. It was the 18th of September, 1939.

Q. Now there came a time when this deed was executed.

A. That is right, all as a result of the conversation

144 I had with Mrs. Logan.

Q. You were present when the deed was drawn?

A. Yes.

Q. Now, Mr. Morris, I am going to show you this deed and ask if that is your signature. A. Yes.

* * *

CROSS-EXAMINATION

* * *

149 Q. And at the time when as I understand you advised her to sell her property because of what you say were these alleged reasons as to the necessity for it.

Did you make any investigation as to whether she
150 was penniless as you explained? A. The answer is yes.

You made an investigation and found that she was? A. Yes, I talked to Mr. Schwarz about the matter and was in-

formed she would be off relief for several months, and was in destitute circumstances.

Q. Did he tell you why she was off relief? A. She had received money and had not notified the government and constituted a fraud and she was cut off.

Q. And did he say she was cut off until that mount of money was used up? A. But as a matter of fact, she was penniless because I told Mr. Schwarz "What difference does it make whether she received \$5,000. The fact is she has nothing now and is back in her rent."

Q. Did you know she had received money from insurance? A. That is money he was talking about.

Q. And also she had gotten money from the lots. A. Mr. Calhoun put up \$200 in Mr. Schwarz's hands, so I am informed by Mr. Schwarz, and he showed me \$200 and wanted me to pay the taxes and I said I did not want anything to do with it.

Q. You mean taxes on the Maryland property? A. Yes.

Q. Those taxes were paid on the Maryland property?

A. Yes.

151 Q. And the balance was paid over to you? A. Mr. Schwarz paid the balance to me while there the next day and I took it.

Q. What did you do with it. A. I used it in costs of defraying expenses of probating that will.

Q. That is what happened with the \$33? A. Yes sir.

Q. Did this contract provide anything with respect as to how she was to be paid? A. \$10 a month. I was not there when the contract was made. Mr. Schwarz drew the contract and had it.

Q. You spoke that she had trouble with her home. A. Yes, sir.

Q. And the Equitable had threatened her? A. They had made demands and Mr. Schwarz called me up and wanted Mr. Calhoun to advance \$90.

Q. Out of what? A. I suppose out of the \$400. I told him I had nothing to do with the transaction, that was a rental job.

Q. Mr. Schwarz told you he asked that Mr. Calhoun advance the money? A. Yes.

Q. Did you call the Equitable as to whether there
152 was any threat of foreclosure? A. Why, Mrs. Logan showed me the letter, and Mr. Schwarz was interested for Mrs. Logan's benefit.

Q. I thought you were the attorney. A. Yes, but he was having dealings with the Equitable because his brother was one of the officers of the association.

Q. Did you call the Equitable to see if she was in any difficulty and whether her property might be sold? Did you find out if that was true? A. I had made an investigation and Mr. Schwarz said not only that but if she had \$100 coming to her for that part out of this transaction what was the hope for the future; the woman could not live off \$100 for a lifetime. Mr. Schwarz told me that any time she went to the hospital she would be cut off and she was four years back in the payments to the building association.

Q. Four years back in her payments? A. Yes; and Mr. Calhoun paid \$91 and it only paid up the interest taxes and she owed at that time \$1,338 out of a \$1,400 loan put on in October 1936.

Did you contact the building association through this association to see as to whether or not there was something you might do in order to avoid what you considered a threatened condition of foreclosure? A. Yes, Mr. Hayes, the answer to that is this: I know as a business man and
a lawyer—

153 You can answer first of all categorically. A. No, I did not contact them at all, but I know as a lawyer when a woman is unable to work and four years back in

the loan and the building association is demanding money and she has none and there is no hope except relief and there was not hope for relief—

Q. Didn't you testify on direct examination that Mr. Schwarz said she could not get back on relief until 1939? A. He said "At best" and this was positive.

Q. And this was in September. Did you investigate if she was able to make up any of the four years payments?

Mr. Hayes, you know when you sign a note secured by a mortgage on your premises that under the mortgage, that when you make a deed of contract the building association can at any time they see fit foreclose and you cannot recover them.

THE COURT. It was in the deed.

THE WITNESS. And not only that, but I looked to the future and saw she not only would have to—

BY MR. HAYES:

Q. (interposing) Would you have advised her as you did if you had known that the building association knew her position and would not have foreclosed? Would you still have advised her to sell the property and still retain a life interest thereafter? A. Yes.

154 Q. And would you still have advised her if you had known this lady was suffering under a very diabetic condition at that time and was a very ill woman? A. I have been in a diabetic condition for a year before last.

Q. I had asked you if you would have advised this lady knowing her condition? A. There was nothing in Mrs. Logan's condition, physical or makeup that would bring me as a lawyer or with my experience to believe that death was at hand; that she walked and talked and knew firmly what she was doing, and the thing I believed in was this, that the woman had a right not to be brought down with

debt and responsibility with no way to pay it, with no hope, and so—

Q. And because of this conclusion, which you said were your conclusions, you say that this instrument was signed by her under your advice, and was the proper thing? A. After we had talked it over, yes; and she further said that this lady who was in that belonged to the relief had suggested to her prior to that if she could get somebody to take her place that would be better.

Q. But it was your advice? A. Yes, and she was in full accord from what she heard from other folk.

155 Q. This deed, was it your suggestion? A. After we had talked it over the best way of relieving her of this responsibility.

Q. I take it you had no thought of any interest of Mr. Calhoun, as your friend, over a period of years, and your client on all previous occasions? A. Mr. Hayes, I did not know whether Mrs. Logan would be there 100 years or 500 years.

THE COURT. Suppose she had kept up 500 years, who would have kept up the payments?

MR. BRANSON. The deed says—

THE WITNESS. She had a right to accept the deed or contract at any time.

BY MR. HAYES:

Q. As a matter of fact there was the question of her condition. A. And he did keep it up.

Q. The question of her longevity did not figure in your suggestion at all? A. I figured from the way it looked to me she might live for some time.

Q. Then you figured it? A. Yes.

Q. And do you believe that based on her longevity? A. Yes; she did not believe she was seriously sick.

Q. Do you know how recently she had been under
156 treatment? A. Well, she told me that had been some
time prior to that, but it had not been any time re-
cent.

Q. Did you know she had suffered from diabetes to the
extent that gangrene set in? A. Yes, she did tell me that
the doctor told her she had a bad foot.

Q. And suffered from gangrene? A. She did not say
what it was.

Q. And she was diabetic at the time? A. Yes.

Q. And she told you she had received treatment for a
long period of years? A. Yes; some people with diabetes
live longer than other people if they control and diet.

Q. Does diabetes affect their mentality? A. It does not
affect them at all.

Q. Your answer I take it is that it does not to any de-
gree?

THE COURT. Does your testimony have in mind the
fact that gangrene of the foot was the result of a very
bad condition of diabetes? You realize that.

THE WITNESS. I realize that it does now, but at the
time she did not say anything about gangrene.

BY MR. HAYES:

Q. Didn't she tell you that she suffered from a
157 condition of the foot? A. That was sometime ago.

Q. But you were representing her and weren't you
interested in finding out? A. I was interested in seeing
that this woman had a home. She had no other help and
from the information I got from Mr. Schwarz she could not
depend on it, and the woman needed help.

Q. You have a piece of paper \$91 paid and the balance
paid to the building association? A. The testimony is that
at the time when Mr. Calhoun paid the \$91, at that time

she was \$1,338 in arrears and she owed \$1,338 on this property.

Q. You just testified in the matter that she was four years back in arrears? A. Yes, sir, approximately.

Q. And she was not approximately \$200 in arrears? A. Mr. Hayes, she was supposed to pay \$14 a month to the building and loan, and you can figure from October 20, 1936 up to September 1939 just what, just how much arrears there would be with a payment of \$91 by Mr. Calhoun, she still owed \$1,338.

Q. Your information, Mr. Morris, was that she was four years in arrears? A. Yes, sir.

Q. And that the building association had threatened foreclosure? A. They wrote the letter and Mr. Schwarz said they needed money.

Q. And that is what you based it on? A. And the future. The woman had no hope and she did not want to go or be put in Blue Plains.

Q. You did not know if the building association had any intention of doing that, and as a matter of fact they were perfectly satisfied in the loan with the way it was being paid. You did not check to find that out? A. I know one thing, Mr. Hayes, it is unusual for a building association to allow anyone to get four years in arrears.

Q. It would have made a difference to find she was not four years in arrears and that the building association had no intention to foreclose and was satisfied with the loan. Would that have made any difference?

MR. BRANSON. I object to that form of examination because it is argumentative.

MR. HAYES. This is the very crux of the case. Here is a member of the Bar who from his statement, in my opinion, places himself in a dual capacity. I think it is very apparent he was representing Mr. Calhoun and not the lady, and he says the transaction was engineered by

him on a false premise because he was arguing on the four years arrearage and threatened foreclosure.

159 Your Honor knows from the testimony of the building association representative they were not prepared to foreclose, and were satisfied with the loan.

THE WITNESS. Mr. Calhoun and another man when he went up to pay the \$91, they said they were glad this money was coming because they wanted this money.

BY MR. HAYES:

Q. You paid the money when? A. After the deed was signed.

Q. And you were there with Mr. Calhoun? A. And Mr. Robinson.

Q. And you were there to see Mr. Calhoun pay the amount in the building association? A. Yes, sir.

Q. Why? A. Because I wanted to see what the condition of the place was. I was still in a representative capacity for Mrs. Logan.

Q. Did you find what was still owed? A. \$1,338 after \$91 was paid, but it only paid taxes and interest, and she still owed \$1,338 on a loan put on in October 1936.

Q. While you were there at the building association in the interest of your client, did you make any inquiries as far as the condition of your client was concerned?

160 A. That time was passed. You see Mr. Schwarz was supposed to be looking out for the interest of Mrs. Logan.

THE COURT. You testified that you went up there in order to find out the situation because she was your client, but as a matter of fact title had already passed at that time.

THE WITNESS. I mean I did not go up there to get the

property there; I went up to see them pay this money and get a new book.

BY MR. HAYES:

Q. You were to get a new book for Mr. Calhoun? A. He went up there to get a new book.

Q. For whom? A. Mr. Calhoun gave me the money to pay. It was the transaction. He was to pay this back money and fix up the place so that this woman would have a home. I had a right to do it because under the deed he was supposed to keep up the back assessments and meet anticipated demands, and so my job was not complete. I had a perfect right to go up there.

* * *

162

MRS. RUTH VENNEY

* * *

DIRECT EXAMINATION

* * *

163 Q. Did she ever discuss with you the question of her property on Union Street? A. Yes.

164 Q. What did she say with respect to that? A. Well, after she was cut off from relief and her circumstances were so bad she told me that she was going to try to get rid of it.

* * *

Q. Now, in the month of September 1939?— A. Yes.

Q. Did you have occasion to talk with her in that month?

A. Yes.

Q. What was the nature of the conversations that you had with her? A. Well, different things.

Q. Was she able to talk intelligently? A. Yes.

165 MR. HAYES. Your Honor, that is a conclusion and I object.

THE COURT. I sustain the objection.

BY MR. BRANSON:

Q. In your observation of her, was she of sound or of unsound mind? A. She appeared always to be of sound mind.

Q. Did you have occasion to talk with her around September 17, 1939? A. Yes.

Q. What was the conversation on that date?

MR. HAYES. If Your Honor please, Mr. Branson is supplying the dates. I object.

THE COURT. Sustained.

THE WITNESS. I don't remember any conversation.

BY MR. BRANSON:

Q. Did you ever have any conversations concerning the house? A. Yes, sir.

Q. What was that? A. She talked to me about the house after she had turned it over to Mr. Calhoun.

Q. All right, what did she say? A. Well, she told me a note came due for \$90 and they were pressing her for it and she sent for Mr. Calhoun to take it over.

* * *

167 Q. About the time that you had the conversation with Mrs. Logan concerning the Union Street property, do you know whether she had any money, or not?

A. I am sure she did not have.

Q. Was her financial condition at that time discussed with you? A. Yes.

Q. What did she say with respect to it? A. Well, that the circumstances were poor, and she just had to do something about it.

MR. BRANSON. Your Witness.

* * *

176

CHESTER JOSHUA VENNEY

* * *

DIRECT EXAMINATION

* * *

Q. You knew Mrs. Mamie Logan during her lifetime?

A. Yes, sir.

Q. Now specifically addressing your attention to September 1939, around the 18th of September, 1939, did you ever have occasion to see her? A. Yes, I did.

Q. And did you have occasion to converse with her?

A. Yes, sir; during that time.

Q. Can you relate any conversation you had with her?

A. No.

MR. HAYES. Just a minute as to when it was.

BY MR. BRANSON:

Q. As of September 17, 1939? A. I do not know whether that is the right date or not.

Q. Tell us about what year it was and what month
177 it was that you did have a conversation? A. It was in September 1939.

Q. Now, what was the nature of the conversation, and what was the conversation? A. She told me she wanted me to come over the next evening, me and my wife. She wanted us to be witnesses because she was going to sell the place.

Q. And at that time of the conversation you had with her, in your opinion was she of sound mind? A. Yes.

Q. She knew what she was talking about? A. Yes.

Q. The next day, did she come over and ask you to be a witness? A. She did not.

Q. Now, previous to September 1939, did you have occasion to talk with her and have conversations with her? A. Yes, I had known her for ten years.

Q. And at any time did you notice any eccentricity or anything wrong with her? A. No.

CROSS EXAMINATION

BY MR. HAYES:

Q. Was she entirely, in your opinion, a well woman during all that period of time, Mr. Venney? A. No, she was not well, because she was sick at times.

* * *

* * *

DIRECT EXAMINATION

* * *

Q. And you are a Notary Public in the District of Columbia. A. I am.

Q. I will show you a signature and ask you to identify this. That is your signature (indicating)? A. Yes.

Q. And you remember signing that deed there? A. I do.

Q. Now, did you have any conversation with Mamie Logan at the time this deed was executed? A. I won't say I had any conversation with her except as having acknowledge the deed, but I was there when a conversation was had between Mr. Morris and Mr. Calhoun.

Q. What was that conversation? A. An explanation of this deed. Mr. Morris took the deed and read it to her and explained it to her, and among other things told her that she would have a home there.

181 Q. Now, did she ever express any dissatisfaction or say anything about the deed? A. Absolutely none.

Q. Did she say she knew what she was doing?

MR. HAYES. I object.

THE COURT. Sustained.

BY MR. BRANSON:

Q. Did she make any statement whatsoever? A. Yes.

Q. What did she say? A. She, among other things, said that she was glad, or she was willing to sign the deed as it gave her an opportunity as Mr. Morris had explained it to her for her to have a place where she could live. Now, do you want me to tell what Mr. Morris said to her?

Q. I want the conversation as you can recall. A. Mr. Morris told her that she would have a home in this place

and that she would—that Mr. Calhoun was going to take it over and assured her a home, pay the expenses, and that she might rent out a room or maybe two rooms, and have a little income from it; that Mr. Morris said that payments on the property were past due, foreclosure was threatened and that it would insure her some place to live.

Q. Did Mr. Calhoun have anything to say? A. Mr. 182 who?

Q. Mr. Calhoun. A. Only in agreement to what Mr. Morris had told her.

Q. From the conversation that you just related, and from what she said, in your opinion was she of sound or unsound mind? A. She was perfectly sound and sane and understanding.

MR. BRANSON. Your witness.

* * *

197

LEON S. CALHOUN

* * *

DIRECT EXAMINATION

* * *

BY MR. BRANSON:

198 Q. Just answer the questions. What was the conversation and what was the conversation about the lots? A. The conversation was about, concerning the lots. I was going along to lend Robinson the \$200. He carried me to the Logan house which was the first time I met her. Mrs. Brooks was there. That was the first conversation.

We started in Mrs. Brooks' car, Mrs. Logan, Eddie Rob-

inson and myself, to Mr. Schwarz' office, on the way there the question came up as to in whose name the lots would be put, and Mrs. Brooks advised Mr. Robinson not to put them in his name because he had been on relief and was drawing \$30 and if he had the property he would have to give that money back, and that is the reason why the lots, when we got to Mr. Schwarz' office the lots were put in my name.

Q. Were you present at the time the contract was drawn?

A. Yes, sir.

Q. And was the question of price discussed? A. Yes.

Q. And Mrs. Logan was able to discuss the ques-
199 tion of or price? A. Yes, they had already made the price up before I got there. I had nothing to do with it. The price was made up between Eddie, Mrs. Logan and them.

Q. Did Mr. Schwarz draw this contract in your presence?

A. He did.

Q. And it was signed by Mrs. Mamie Logan? A. That is right.

* * *

Q. Subsequent to the date of the drawing of the contract for the sale of the lots, did you see Mrs. Logan again?

A. I saw her again. I do not know whether it was sometime between that and the 18th and that was at the insistence of Mr. Morris, the lawyer. He came to me and said—

MR. HAYES. I object to the conversation between the defendant and Mr. Morris.

200 BY. MR. BRANSON:

Q. Without going into the conversation between

Morris and yourself, did you go to see Mrs. Logan? A. Yes, I did.

Q. What conversation did you have with Mrs. Logan, and when was that conversation? A. It was prior to the signing of the deed. I went to Mrs. Logan and in the presence of Mrs. Logan the thing was discussed and she asked me would I do that, and I take this property under those conditions.

MR. HAYES. Of course, Your Honor, I object "Would I take this property under those conditions".

BY MR. BRANSON:

Q. And I am going to show you this deed.

MR. HAYES. Do you mean the deed that had been drawn at that time?

THE WITNESS. No. they discussed those conditions under which I was to take it and the conditions under which she was to give it.

BY MR. BRANSON. Under what conditions was she to give it and you were to take it? A. The conditions were that she owed the building association \$90 or \$91.

201 THE COURT. The building association on taxes?

THE WITNESS. Owed the building association I understood it, and that the building association was calling for this money, and she asked me if I would go on that and she take a life estate, give her a life estate so that she could rent a few rooms that were rented at that time and that I was to make all repairs, pay all expenses, water rent, and give her a place. I was not to bother the property, and keep it in repair for her life, and after her life I was to get the property.

Q. And what did you say with respect to that particular

proposal? A. In the first instance I said "Why not get her brother".

Q. What did she say in regard to that? A. She said her brother lived a couple of doors from her; she did not want any of them and he had not given her aid. She had been there sick time after time and that she had also needed coal and he had a lot of coal, and then there was the question of his wife, that his wife did not like her and she did not care for his wife and she did not want him or her to have anything to do with it; she thought that he was under his wife's thumb and if she gave anything to him his wife would get it.

Q. How long after that was it that you returned again and engaged in conversation concerning this property?

A. That evening when I left I said "You think it over and try to see your brother" and the next morning,
202 as I said, Mr. Morris and Mr. Lacy picked me up and went down there and met Mrs. Logan again, and in the presence of Mr. Lacy and Mr. Morris I asked her again why not get her brother to take it over because I did not particularly want to be bothered with it under the conditions of things because I know there is always a flare-back in those things.

MR. HAYES. Of course, Your Honor, that is irrelevant.

BY MR. BRANSON:

Q. Now when this deed was signed, did you have a conversation at that time? A. Yes.

Q. Did you have a conversation at that time? A. Yes.

Q. What did Mrs. Logan say? A. Mrs. Logan?

Q. Mamie Logan? A. The deed was read to Mrs. Logan and Mrs. Logan at that time was given another opportunity to say as to whether or not she wanted it just like it was

there. We asked if she knew what she was doing and she said "Yes". she did not want her brother. She really did not want her brother."

Q. Now, at the time of the execution of the deed, and with respect to a comparison of the time of the execution of the contract for the lots, did you notice any susceptible change in the physical and mental condition of
203 Mamie Logan? A. None; there was no change; it was only two or three days.

Q. And was she able to hold an intelligent conversation?
A. Yes, she was able to hold an intelligent conversation.

Q. And in your opinion was she of sound mind and capable of executing a valid contract? A. I think she understood very clearly what she was doing.

Q. After executing the contract did she ever make any other demands on you? A. Yes, she sent several times, often times; right after it was done I told her any time she needed me she would have to send, I would be busy, and if she sent I would give her aid.

Q. I have here a receipt with a signature on it. Did she sign that? (indicating) A. Yes, that is her signature.

Q. Did you let her have the money? A. Yes.

MR. BRANSON. Have you any objection?

MR. HAYES. I would like to see it (examining note).

BY MR. BRANSON:

Q. Did you ever receive this (indicating) communication from her requesting money? A. Yes.

Q. And with respect to this note of September 25, 1939, did you receive that communication from Mrs. Log-
204 an? A. A little boy brought it.

MR. BRANSON. I wish to offer this receipt in evidence. It reads: "Received from Mrs. L. S. Calhoun

\$4 to pay my gas bill" and it is signed M. B. Logan and dated 9-27-39.

(The note above referred to was marked defendant's exhibit no. 5-NLK, received in evidence and made a part of the record.)

BY MR. BRANSON:

Q. With respect to a communication as of the 10th month, the 16th day, in the year of 1939, did you receive that (indicating)? A. Yes, the date is on there.

MR. BRANSON. Do you have a basic objection to those?

MR. HAYES. I have an objection. I think it is probably admissible on the theory he testified that these things were given to him. I have a definite question as to the probity of them to which I will call attention when I cross-examine him.

MR. BRANSON. I offer this in evidence as defendant's exhibit 5A-NLK. It reads as follows: "Washington, D. C., 10-6-39.

"Mr. Calhoun:

"Dear Sir:

"Kindly send me money to pay my electric light bill. Please send me \$4 which is the amount I so desire. I am

Yours truly,

(signed) Mayme Logan."

205 (The exhibit above referred to was marked defendant's exhibit no. 5A-NLK, received in evidence, and made a part of the record.)

BY MR. BRANSON:

Q. I show you a note dated October 1, 1939 which reads as follows:

"Mr. Calhoun:

"Dear Sir:

"Please give my niece \$6, I want to go to the doctor. Also would like to talk to you. Thanking you in advance,
(signed) Mamie Logan."

Did you receive that note? A. Yes.

MR. BRANSON. I wish to offer this in evidence as defendant's exhibit 5B.

(Paper marked defendant's exhibit 5B-NLK was received in evidence and marked a part of the record.)

MR. BRANSON. I show you a letter which reads as follows: "Washington, D. C. September 25, 1939

"Dear A:

"Call Lee. I wrote him a note and asked him to pay my gas bill tomorrow, so will you please call him and see if he is going to do it. Please do this. Morris promised to take the note to him because if it is not paid they will cut my gas off. Call him early because if it is cut off it
206 will cost me \$2 to have it turned on. Please oblige.
(signed) Mamie Logan."

Did you receive that letter? A. Yes, sir.

MR. BRANSON. I wish to offer this in evidence as defendant's exhibit 5C.

(The exhibit marked defendant's exhibit 5C-NLK was received in evidence and made a part of the record.)

BY MR. BRANSON:

Q. There came a time when you paid the water rent on the premises? A. Yes, sir.

Q. And you received that receipt (indicating)? A. Yes, sir.

MR. BRANSON. I wish to offer this water receipt in evidence as Defendant's Exhibit No. 5-D.

(The exhibit above referred to was received in evidence

and made a part of the record, as Defendant's Exhibit No. 5-D-NLK).

BY MR. BRANSON:

Q. And there came a time when you paid the coal bill, as of December 1939? A. That is right.

MR. BRANSON. I wish to offer this bill in evidence as Defendant's Exhibit No. 5-E.

207 (Defendant's Exhibit No. 5-E-NLK was received in evidence and made a part of the record.)

BY MR. BRANSON:

Q. There came a time when you paid the Washington Gas Light Company? A. Yes, sir.

MR. BRANSON. I wish to offer this receipt in evidence as Defendant's Exhibit 5-F.

(The receipt above referred to marked Defendant's Exhibit No. 5-F-NLK was received in evidence and made a part of the record.)

BY MR. BRANSON:

Q. Did there come a time when you had a discussion concerning the property on Union Street with Mrs. Burnett, Mr. Burnett and in the presence of Mrs. Brooks? A. Yes, I did.

Q. And what was the conversation there concerning the property? A. They came to my house, I think it was some time in November, as near as I can recall. I think at that time they informed me Mrs. Logan was in the hospital and they came to talk about the hospital and said she wanted to get out of the agreement. I said " Well, if that is her will, I think we understand what she is doing. I will make

a trip to do it, and I will go to the hospital, and if it
 208 is her desire I will get out." And I went to the hos-
 pital. As a result of that visit on the Sunday follow-
 ing I went to the hospital, and I called her attorney who is
 Mr. Morris, a friend of mine.

MR. HAYES. I did not hear that.

THE WITNESS. I called Mr. Morris, if he would be
 down, and at the time I saw here would be a witness to
 whatever she had to say, and I explained that these people
 were discussing and desiring that I get out of it, and if it
 was her desire I would get out. On that Sunday morning
 we went to the hospital. Her sister was there from Chica-
 go, and I talked with Mrs. Logan. She was sick all right,
 but she knew clearly what she was saying, and she said
 Mr. Schwarz has been there and he wanted to help her but
 it looked like the help rested on the fact that she had to
 get the property back. She said "He hasn't helped me
 in all this time, and I know just exactly what I am doing;
 to go ahead just like it is; I have gas and electric bills
 which you see, in December." She said would I pay it in
 the presence of her sister who is in Chicago and is not here.

BY MR. BRANSON:

Q. And at another time did she say she wanted you to
 reconvey the property to her? A. At no time.

Q. Did you at any time make promises or over-
 209 tures of marriage to Mrs. Mamie Logan? A. Under
 no conditions; I did not see Mrs. Logan that often.
 You will notice that by most of those notes she had to send
 it and she would get in touch with Robinson to get in touch
 because I told her at the beginning when I was there if she
 wanted me she would have to get in touch because I had
 other things I had definitely to do, but to contact me be-
 cause I was too busy to come there.

* * *

• • •

REDIRECT EXAMINATION

• • •

230 MR. BRANSON. I had asked no question at that time. I asked him if he drew the deed, and showed him the deed. That is all.

MR. HAYES. I have no questions.

MR. BRANSON. That is all, Mr. Morris.

MR. BRANSON. At this time I want to introduce into evidence—

THE COURT. Did Mr. Morris draw both deeds?

MR. BRANSON. The Maryland property too.

THE COURT. The deed contained also an agreement for life estate?

MR. BRANSON. It was just one instrument; it was contained in this one instrument in which reserved a life estate. On November 15 the deed to the lots—

• • •

233 MR. BRANSON. Your Honor, I would like to introduce in evidence the record in this cause of Burnett vs. Calhoun when this suit was previously brought and dismissed by the court on the theory that it could not be brought under a power of attorney which was obtained and attached to the original suit as of the 30th day of January, 1940, subsequent to the execution of this deed.

THE COURT. What do you understand the probity value of that to be?

MR. BRANSON. The probity value of that is to show

that Mr. Hayes is attacking the question of mental
 234 competency of the deceased in this case, yet he, him-
 self, by a power of attorney he had executed on the
 30th day of January, 1940, executed by Mrs. Logan, acts
 and brings a suit.

MR. HAYES. You do not mean I got the power of at-
 torney?

MR. BRANSON. No, but you acted under that power
 of attorney, and alleged in the particular suit practically
 the same allegations that you are alleging in this suit.

MR. HAYES. I have not the slightest objection.

MR. BRANSON. That is signed by Mr. Schwarz and
 Marion Burnett, power of attorney.

THE COURT. Who is Marion Burnett?

MR. BRANSON. The wife of the brother.

THE COURT. Not a witness in this case?

MR. HAYES. I have no objection.

* * *

239

DR. ERNEST Y. WILLIAMS

* * *

REDIRECT EXAMINATION

* * *

Q. Doctor, you were sworn on yesterday; and I think
 the Doctor qualified yesterday, and I think there is no ques-
 tion as to your qualifications.

Doctor, there has been some testimony in this case about
 cerebral arteriosclerosis with hemorrhage. Will you give
 us some idea as to the cause and the nature of that disease?

A. Arteriosclerosis is a physiological condition in the

first place, that when an individual comes after 45 or 50, but instances where this condition produces effects or where one has some evidence of disease, such diseases or diseased condition, such as that produced from syphilis, lead poisoning by drinking water that passed through lead pipes which were used in plumbing; metabolic disturbances like gout or diabetes; and instances where the individual has done a tremendous amount of mental work without adequate rest between—in those instances the blood vessels of the brain seem to be abused or damaged severely and the result is a lack of adequate blood to the brain to be supplied.

There may be one of three types: If it hits the larger vessels of the brain then, because the blood supply
 240 is inadequate that vessel becomes diseased to a point where it breaks and when it breaks then you get evidence of cerebral hemorrhage and a large part of the brain is cut off from blood supply; you have softening of the brain and the individual definitely in most instances dies within a short period of time.

There is another type or condition that one meets in cerebral arteriosclerosis, namely, affecting the middle sized vessels and one gets numerous small hemorrhages which may or may not be sufficient to cause death, but severe enough to impair mental ability and emotional stability.

Lastly one get the type of damage that affects the very end of the blood vessel, in which the individual shows marked irritability because the nerve supply is definitely impaired with, and one gets marked irritability, gradually more serious and the party is moody, emotional, having crying and laughing spells, and the like.

Q. Would you say diabetes then has a relation to arteriosclerosis? A. Very definitely.

Q. If there were a patient here who was born in 1873, and who showed a history of a diabetic condition with gangrene in 1938, and thereafter—

THE COURT. In February 1938, wasn't it?

MR. HAYES. Yes, Your Honor, I think it was.

264

OPINION

The Court does not think it necessary in a case of this character where it is found that the decedent was technically able to make a valid deed or contract to pass on it; but the Court thinks that the testimony clearly shows that she was deteriorating mentally and physically; and anyone who dealt with her in any serious matters where her sense of right was involved would deal with her in a most friendly manner, and that any hard business transaction would be viewed very carefully by the court and scrutinized very carefully by the court.

The Court really has not had any difficulty in the case and never had. There has been no testimony that has altered the real feeling that the Court has had in the case almost from the beginning.

The Court does not hold that there was any actual fraud perpetrated by the defendant; it does not have to hold that and when I say "fraud" I mean fraud as of the most vicious sense. It does not have to.

But these plaintiffs, the heirs at law, are entitled to equity. The condition she was in entitled her to be treated in the most cooperative and friendly manner.

The Court has not hesitation in saying there can not be any true opinion that this transaction was to her interest. It could not have been. In the first place the deed is very indefinite as to what she is to receive. It is very indefi-

nite. What were the improvements? As far as she
265 was concerned she got \$25 worth of improvements,
but where you got a tenant after her death there had
to be something over \$200 paid for improvements. It shows
an indication of how indefinite the agreement was as far

as the benefits she was to receive are concerned.

The mere payment of the \$14 or \$17 a month and the \$35 a year taxes is a very minor part of an individual's livelihood. Of course there was indicated that there was no indication of building upkeep, clothes, coal, electric light, food or anything of a very substantial interest to her.

If you are going to look at it from the standpoint of a gambling transaction it was a 50 to 1 action as far as the defendant is concerned.

The Court is not going to undertake to elaborate its opinion right now. The Court will write an opinion in the case.

The Court thinks as far as accounting is concerned, the Court as I said before, it does not say it is a case of *fraud*, to deprive the defendant of the right to be placed in the position he would have been in if the transaction had not been made as near as that can be done.

The Court does not think the matter should have to go to the Auditor.

The Court thinks that counsel should try to get together on figures which would place the parties where they would have been if this transaction had never taken place;
266 and submit them to the Court, if they can.

The Court's ruling is that the deed will have to be set aside, and the defendant placed in as near as possible the position he would be in if the deed had not *been made*; and counsel can prepare findings of facts and conclusions of law.

MR. HAYES. Thanks, Your Honor.

III

APPELLANT'S EXHIBITS

267

EXHIBIT NO. 1

FILED—JULY 31, 1943

Washington, D. C.

Sept. 14, 1939

Received of Leon S. Calhoun of 2152 K St., S. W. Washington, D. C. the sum of two hundred dollars lawful money \$200.00 as a deposit for the purchase of the property known as lots 10 to 15 inc. in Dist. 118-18 Sylvan Vista, Prince Georges County, Md.

Bal of purchase price \$200 to be paid by promisory note, bearing 6 per cent interest on on unpaid balance, in instalments of \$10.00 ea month, payable the 1st day of each month.

Full amount of purchase price \$400.00.

Mamie Logan

Edgar Robbins.

A. M. Schwarz.

268

EXHIBIT NO. 5a

FILED—Jul 31 1943

Washington, D. C.

10-6-39

Mr. Calhoun

Dear Sir;

Kindly send me money to pay my electric light bill. Please send me \$4.00 which is the amount I so desire. I am your truly

Mamie Logan

269

EXHIBIT 5b

FILED—JUL 31 1943

October 15, 1939.

Mr. Calhoun.

Dear Sir.

Please give my niece \$6.00, I want to go to the Doctor.
Also would like to talk to you. Thanking you in advance,
Mamie Logan

270

EXHIBIT 5c

FILED—JUL 31 1943

Washington, D. C.
Sept. 25, 1939

Dear Eddie.

Call Lee I wrote him a note and asked him to pay my gas bill tomorrow so will you please call him and see if he is going to do it. Please do this Morris promised to take the note to him because if it is not paid they will cut my gas off. Call him early because if it is cut off it will cost me \$2.00 to have it turned on.

Please Oblige.
Mrs. Mammie Logan.

274

EXHIBIT A

FILED—JUL 31 1943

6012 FILED—MAR 1 1940

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I,

Mamie Logan, residing in the District of Columbia, do hereby constitute and appoint Urpwheart Burnett, also residing in the District of Columbia, at 1307 Union Street S. W., my true and lawful attorney for me and in my name to prosecute, commence, enforce and institute all actions and legal proceedings touching or pertaining to the claim which I may have for reconveyance or repossession of premises—1311 Union Street, S. W., the title of which property is now recorded in the name of Leon S. Calhoun; and generally to do, execute and perform any other act, matter or thing, whatsoever, which, in the opinion of my said attorney, ought to be done, executed, or performed, in and about the premises, as fully as I, the said Mamie Logan, could do, if personally present.

AND FURTHER I, Mamie Logan, do hereby ratify and confirm all that my said attorney shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30th day of January, A. D., 1940.

Her Mark

X

Mamie Logan (seal)

In the presence of:—(Signature by mark)

Frank W. Adams.

Witness. A. M. Schwarz, 805 5th St., N. W.

Marion Burnett

In the above entitled cause, the Court finds as a fact:

1. That the parties plaintiff are the heirs at law and next of kin of one Mamie Logan, deceased. (Same was stipulated by counsel.)

2. That the said Mamie Logan, was born in 1873. That

during her lifetime she was seized and possessed of Lot 106, Square 503, improved by a dwelling known as 1311 Union Street, Southwest, Washington, D. C., of an estimated value of \$4000.00.

3. That as of September 18, 1939, said Mamie Logan, executed a deed purporting to convey to one Leon S. Calhoun, in fee simple, the above described property, reserving to herself a life interest in same.

4. That for a long period of time the said Mamie Logan, suffered from diabetis. That this malady in February, 1938, evidenced itself in a gangrenous condition of the foot, for which amputation was first thought to be necessary.

5. That on February 20, 1937, the said Mamie Logan, made application for and received aid for the blind from the Public Assistance Division of the District of Columbia; and she was as a matter of fact almost totally blind.

6. That in November, 1939, the said Mamie Logan, suffered from a diabetic coma, necessitating hospitalization for several weeks. That thereafter Mamie Logan, was from November, 1939, to December 11, 1939, treated at the hospital for diabetis. That on February 21, 1940, she was admitted to Gallinger Hospital, psychopathic ward, where she remained until she died in March, 1940.

7. While confined in Gallinger Hospital, on the last occasion referred to above, upon investigation instituted by the Mental Health Commission, she was adjudged to be of unsound mind, and was committed by order of Court to St. Elizabeth's Hospital for the Insane, but died before re-

moval from Gallinger Hospital to St. Elizabeth's Hospital.

8. That on September 18, 1939, at the time when Mamie Logan executed the deed, the validity of which is attacked in this suit, she was not mentally capable of transacting any kind of serious business; that her physical condition at that time was such that she evidently had but a short time to live; and the consideration for the deed was obviously entirely inadequate and the transaction inequitable.

9. On September 18, 1939, the said Mamie Logan, was \$222.58 in arrears in her payments to the Equitable Co-operative Building Association inclusive of taxes, but the Association knew her condition; was entirely satisfied with the security which the property offered for the amount due it; and there was no threat of foreclosure, nor any intention on the part of the Association to foreclose.

By the Court:

T. ALAN GOLDSBOROUGH,

Justice.

From the findings of fact heretofore made in this cause, the Court concludes as a matter of law;

1. That Mamie Logan, as of September 18, 1939, was not mentally capable of transacting any kind of serious business, and did not comprehend the significance of the terms of the deed executed by her purporting to convey in fee simple, reserving a life estate, Lot numbered 106 in

Square 503, in Thomas E. Smithson and others subdivision of lots as per folio 37 of the land records for the District of Columbia, known as 1311 Union Street, Southwest, and reciting among other things:

“The said party of the second part (Leon S. Calhoun) is to assume the indebtedness now on the said land and premises, and pay the water rent, taxes and all other assessments that may come against said property in the future, during the life of the life tenant.”

2. That the consideration for said deed was invalid, insufficient and inequitable and amounted to a fraud upon the said Mamie Logan, and those subsequently taking title under her.

3. That the said deed should be cancelled and rescinded and by appropriate adjustments of receipts and expenditures the rights of the said Mamie Logan, and those taking under her, and of the said Leon S. Calhoun, should be restored as of the 18th day of September, 1939; and to this and all appropriate judgments and/or orders should be signed.

By the Court:

T. ALAN GOLDSBOROUGH,

Justice.

Filed July 31, 1943

275

THIS DEED

Made this 18th day of September in the year one thousand nine hundred and thirty nine, by and between Mamie B.

Logan party of the first part, and Leon S. Calhoun party of the second part:

WITNESSETH, That in consideration of ten Dollars, the party of the first part does hereby grant unto the party of the second part, in fee simple reserving a life interest, all that piece or parcel of land, together with the improvements, rights, privileges and appurtenances to the same belonging, situate in the District of Columbia, described as follows, to wit:

known as number 1311 Union Street, South West; and more particularly described as lot number 106 in Square 503 in Thomas E. Smithson and others' subdivision of lots as per plat recorded in the Office of the Surveyor for the District of Columbia, in Liber 23, folio 37 of the land records for the District of Columbia.

The said party of the second part is to assume the indebtedness now on the said land and premises and pay the water rent, taxes and all other assessments that may come against said property in the future, during the life of the life tenant.

AND the said party of the first part covenants that she will warrant specially the property hereby conveyed; and that she will execute such further assurances of said land as may be requisite.

WITNESS my hand and seal the day and year hereinbefore written.

X MAMIE B. LOGAN (SEAL)

In presence of—

S. E. LACY

RUSSELL MORRIS

**EXCERPTS FROM TESTIMONY DESIGNATED
BY APPELLEES**

16 ALEXANDER A. SCHWARZ

DIRECT EXAMINATION

* * *

18 THE WITNESS. Mr. Hayes was asking what her condition was. The right eye was 4-200 and the left eye was 3-200. No employment in her case.

THE COURT. When was that?

THE WITNESS. Examination was on February 8, 1937.

* * *

20 Q. And what can you say of your personal knowledge as to the condition of her eyesight? A. To my lay knowledge she was blind.

* * *

28 CROSS-EXAMINATION

* * *

29 Q. Now you also made a statement concerning her vision. With respect to her eye you said her right eye was 4-200. A. 4-200.

Q. What does that mean? A. That means the perception—I would say—I know—I am not an expert, but I would

say 75-200 is practically normal vision, and there is a difference between 75-200 and 4-200 and 3-200 is less perception.

Q. She could see to some extent, couldn't she? A. I am not a doctor.

MR. HAYES. That testimony is inadmissible. On cross-examination he brought out what Mr. Schwarz testified, which is now at least a matter of record, that 75-200 is normal and this lady's perception was 4-200 and it is a relative situation between 75 and 4 which indicates her perception.

* * *

33 A. She had come in possession of some other value in Lackawanna County, Pennsylvania, by which we received a portion and she received the remainder for having paid the premiums.

Q. Now, out of all those policies you say she had money in her possession, she had money as the result of those paid up policies? A. She had money as a result of one-half of their value.

Q. Did she have money to live on? A. Yes, sir.

Q. On those policies? A. One half of the face value in cash.

THE COURT. How much was that?

THE WITNESS. I would have to go back and check those figures; I don't have them before me, Your Honor. In our record here we have it. She received it from the Metropolitan Life Insurance Company, if I may read from the record. A policy so and so, payment of disability clause, total \$411.95.

34

BY MR. BRANSON:

Q. When was that paid to her? A. When?

Q. Yes, sir. A. This letter was received by me on December 1, 1939.

Q. As a payment to her from the Metropolitan? A. In response to our letter of October 16, 1939 the Metropolitan advised me to the effect that she had received a total disability claim of \$411.95.

THE COURT. And you say there is another one?

THE WITNESS. There is another one for \$175 subsequent thereto.

THE COURT. In addition to that \$411.95?

THE WITNESS. Yes, sir; part of it was used to pay taxes and she had \$60 and a certain sum every month from the purchase of these lots.

* * *

35 THE COURT. As I understand it she received in March \$418 plus \$175 and she was also receiving the balance of the \$400 on the Maryland lots, or monthly payments.

THE WITNESS. Yes, sir.

THE COURT. All right.

THE WITNESS. And on the strength of her own money I think we closed the case and I think our case worker will verify that. We did not give her money until this money was used up.

* * *

36 Q. And do you have any interest in the outcome of this suit as to whether or not the Government will be reimbursed? A. Yes, sir.

Q. To what extent? A. \$311 plus 3 per cent simple interest to the date of settlement.

THE COURT. When you say "you" you do not mean yourself individually?

THE WITNESS. I mean the District of Columbia Government.

* * *

39

RE-DIRECT EXAMINATION

BY MR. HAYES:

Q. When was it that Mr. Morris introduced himself to you as being Mr. Calhoun's counsel? A. He came to me in relation to the sale of those lots and I believe I explained to Mr. Morris that in order that the title could be had—Mr. Calhoun had already paid the taxes, and I explained that in order that Mr. Calhoun would receive the title it would be necessary to probate the will of her husband and to put the title in Mamie Logan.

Q. It was in Calhoun's interest? A. It was in Calhoun's interest that that was done.

* * *

41

MISS EILEAN BROOKS

DIRECT EXAMINATION

* * *

42

BY MR. HAYES:

Q. Did there come a time subsequent to that that there

was any different type of relief that she became entitled to and did receive? Yes, it was blind relief.

43 Q. And when did she receive that, Miss Brooks?

A. The case was accepted in May 1937.

THE COURT. How much did she get after that?

THE WITNESS. \$32 a month.

BY MR. HAYES:

Q. And did that extinguish the other type of general relief? A. Yes, it did.

Q. Now, did you know Mrs. Logan personally. A. Yes, I did.

Q. You had occasion to go and see her as a part of your work? A. Yes.

* * *

57

MILTON R. JOHNSON

CROSS EXAMINATION

BY MR. HAYES:

Q. Will you please give us your full name? A. Milton R. Johnson.

Q. And your employment. A. Insurance and Tax Department in Equitable Cooperative Building Association.

Q. You have been connected with that organization for how long? A. For 23 1-2 years.

Q. And you were there in 1939? A. Correct.

Q. Have you brought along the record as to a piece of property owned by Mamie Logan? A. All the records of the office are in this file (indicating), except for one thing, except the bond. The bond of indebtedness we have to keep in a safe deposit box. I do not have that.

69

MRS. MATTIE B. BURNETT

DIRECT EXAMINATION

BY MR. HAYES:

Q. Will you give us your full name, please? A. Mrs. Mattie B. Burnett.

Q. And you are the wife of Mr. Burnett here (indicating)? A. Yes, sir.

Q. And you live where, Madam? A. 1307 Union Street, S. W.

Q. Your sister-in-law, the late Mrs. Mamie Logan, lived at what address. A. 1311 Union Street, S. W.

Q. That is two doors from your own home? A. Two doors.

Q. You, of course, knew her during her lifetime? A. Yes.

Q. You knew her during her lifetime? A. Yes.

Q. Directing your attention to approximately on or about September 1939, what was her condition physically and mentally? A. Well, she was sick and partially blind and her mind was bad. She could not remember anything.

Our feeling back in September was that we thought
70 that her mind was failing.

Q. Further back than September you reached that conclusion? A. Yes.

Q. Approximately when did you reach it? A. I cannot remember the date, but I noticed, we noticed it a good while back when her sister was here from Detroit.

Q. Will you tell us some things she did which indicated her mind was bad? A. Well, at the least little thing she would fly in a passion and we could not control her. Some-

times we would not know what she was saying or doing until she got herself together. We knew she was sick and we tried to calm her down, and not send her away, and so we tried to keep her; and she would have fainting spells.

THE COURT. What kind of spells?

THE WITNESS. Fainting spells. We would pick her up. You know how people act when they are like that.

THE COURT. Was she confined to her bed in September 1939?

THE WITNESS. Well, she was confined up and down most of the time for a year. She was up and down. She was in the hospital twice, Gallinger, and at that time they said her mind was bad.

THE COURT. Just prior to September 1939.

BY MR. HAYES:

Q. When she was in Gallinger Hospital? A. I do not know when she was in. I know it was before September. I think it was in the summer or spring. I cannot just remember the date, but the last time was February.

THE COURT. Following February?

THE WITNESS. Yes.

BY MR. HAYES:

Q. And at the time you carried her there in February do you know to what ward she was admitted? A. We carried her first to the ward she was in first, and they would not take her out of the car. They said they would not take her back because her mind was bad.

MR. BRANSON. I object to what they said.

MR. HAYES. I think it is clear it is not admissible.

Not what was said, but what was done. Where did you take her?

THE WITNESS. We took her to the observation ward and we had to wait a little while until they would take her in the observation ward.

BY MR. HAYES:

Q. And she continued to remain there until the time of her death? A. Yes, sir; some time later.

Q. During her lifetime or during the time about which inquiry is made, not specifically around September 1939, what, if anything, did you and your husband do as far as helping to maintain her? A. We did everything
72 we could possibly to add to her support. In fact, we boarded her. I fed her all the time from the time she got so she could not go for herself. We took care of her.

Q. You say you boarded her? A. Yes.

Q. Did she come to your home? A. As long as she could, and when she could not we took it to her on a tray. She had to have special diets, you know what a diabetic patient was to have. I saw she had what the doctor said she had to have, two slices of bacon—

Q. Do you know how long she was suffering from this diabetic condition? A. I do not know how long she suffered from that because she was sick a long time.

THE COURT. Do you remember what the date was?

THE WITNESS. Sometimes I would give her a glass of orange juice, a slab of bacon always, some juices, and sometimes eggs, but not both at the same time, and then she had to have a needle and have that tied up.

THE COURT. Who would give her the needle?

THE WITNESS. The nurse down there. The nurse

came and gave it and when she was well she could go and she went down there.

THE COURT. Is it your testimony that in September and October 1939 that you and your husband fed her?

THE WITNESS. Yes, sir.

THE COURT. All right.

THE WITNESS. We fed her the best we could. We carried the trays to her. I know we did it until she went to the hospital and we did it again and looked after her and gave her just what the doctor said she should have. We had a lady to *say* with her.

THE COURT. To look after her?

THE WITNESS. Yes, sir; I bought bacon and eggs.

BY MR. HAYES:

Q. And did you continue that until she was taken to the hospital in January and February? A. Yes, sir; my trays were set in the room and the glasses taken out.

Q. Will you tell us again any specific thing that you remember that she did which tended to show that she, in your opinion, was not of sound mind, and give us as nearly as you can any dates *cfvering* any such events? A. I think there was so much; I cannot remember. A person acts so funny. You cannot remember everything they do, but for instance, if anybody came in where she was she would say "Who is that?" or something like that, and in a few minutes she would say something else, not the same words. You know how people talk when they are crazy.

Q. According to the question "Who is that?" that indicated she was blind, wasn't she? A. Yes, and then something else. You could not keep up with what she said. She would say so many things like that.

Q. Do you mean her conversation was rambling? A.

Yes, you know how a person would be acting out of their mind; they would not know anything else.

Q. Was there any particular thing that occurred as far as her sister was concerned? A. Oh, yes, her sister was here a while, and her sister wrote and she told me that she thought she was losing her mind.

MR. BRANSON. I object.

THE COURT. Sustained.

MR. HAYES. Do not give any conversations you had with others.

THE COURT. You can give the conversation of your talk but not what somebody else said.

BY MR. HAYES. That is correct. Confine yourself to what His Honor indicated. No conversation unless it was with Mr. Calhoun or with the deceased person. Do you have any knowledge of anything that happened? A. Well, on one occasion she got so wrought up with her sister—I do not know just why—she picked up a knife and said she could kill her with a knife if she could get her hands on her. She said “You go in and talk to her and see what you can do.” I went in and said “What is wrong?”

75 Why don't you be quiet? What are you doing?”

I got her calmed and went in the front room and sat down to be fed. She said “Sissie makes me so mad” and she said “Where is she?” I said “She is in my house.” I said “What is wrong with you?” She said “I do not know,” and said “Where is she?” She wanted her around and did not. Finally she would get quiet and go to sleep after being in a rage.

Q. Was there anything about which she made complaints or seemed to have on her mind during this period? Was there anything that she continued to have on her mind during this period? A. On her mind? Well, she had on her mind she would like to get well, and all like that. And

then, I do not know whether I told you when I came in. Must I tell it?

MR. HAYES. What you said to me?

MR. BRANSON. I object.

THE COURT. I did not hear what the witness was saying.

MR. HAYES. I asked her a question and she began to answer and that is apparently all she did. She said "Shall I tell you what I told you when I came in?"

That is what I was directing my question to, what you said to me.

THE WITNESS. You want me to tell that?

BY MR. HAYES:

Q. That is right. A. Well, she was very, very upset. She told me she was going to get married and I said
76 "Mayme, who will you marry?" and she said "Don't tell that. I will marry a man with plenty of money. I will be in the money and I will marry Mr. Calhoun. He has plenty of money; he is in business and I will be rich and I will have some money" and then he did not come back to marry her and she looked out the day before she died and she said "Did he come in?" I thought she meant her brother. She said "No, indeed. He promised to come out here and get me."

THE COURT. When did she tell you he would marry her?

THE WITNESS. I think September or October. It was after he made this deal claiming he was going to marry her, and he did not want the building. I do not know who she was going to marry but the gentleman sitting there would not marry a woman 68 years old.

THE COURT. It has been done.

THE WITNESS. So we laughed at it because I did not

know the gentleman, but she said it was Mr. Calhoun and he had plenty of money.

BY MR. HAYES:

Q. Did there come a time, Mrs. Burnett, when you had any personal contact with Mr. Calhoun? A. What?

Q. Did there come a time when you had personal contact with Mr. Calhoun about this transaction, about the—

A. Only when we went over to see whether he would
77 change it, whether he would turn back the house, instead of the lots. Miss Brooks was with us.

Q. Miss Brooks who was here yesterday? A. That is the only occasion I saw Mr. Calhoun or knew where he lived at that time.

Q. Did you on that occasion go to his house? A. Yes, Miss Brooks, my husband and myself.

Q. At that time what occurred? A. What occurred?

Q. Yes. A. Mr. Calhoun sat down and talked with us and he said he saw where the mistake was made and he said he would gladly right it if we would give him a little time, but he said "Wait until I see my lawyer."

Q. What did he say with respect to what he was willing to do at that time? A. What he was willing to do?

Q. What he was willing to do? A. He was willing to return the papers provided we would give him what he had put up, and he said he was willing and I went down to see to get the money to pay him whatever it was.

Q. You went to get the money where? A. I went down to my loan.

Q. To the Equitable? A. Yes, they were going to let me have it.

78 Q. They indicated a willingness to let you have the money to repay it? A. Yes, that is the contract they had for me that day.

Q. How frequently did you visit your sister in the months of August and September? A. Did I visit her?

Q. Yes. A. I lived next door; every day.

Q. And talked to her every day? A. If I went to work I would look in in the mornings to see if she had her food and needed anything.

Q. And as a matter of fact you used to help her transact business? A. Well, she was not transacting business.
79

Q. She was transacting no business that you knew about? A. Yes.

Q. Now did there come a time when she got in difficulty about the money that she had and she had to go down and see the Public Welfare? A. No.

Q. Did she not discuss that with you? A. No.

Q. You know Mrs. Venney who lives in your immediate neighborhood? A. Yes, sir; I do.

Q. And isn't it true that at times when she would get out of coal in the winter she would borrow coal from Mrs. Venney and you would not give her any? A. No, there was no time that I would not give her coal or wood or give her money if I had it; I don't use coal. I gave her all the coal in the shed when I put an oil burner in, and there was never a day that she asked for coal, food, or anything which pertained to upkeep that I did not give her. If I did not have it I got it on time and gave it to her, so that is not true.

Q. So there was no occasion for Mrs. Venney to give her coal?

MR. HAYES. I object.

THE WITNESS. If she wanted, but not because I did not give her anything.

80 BY MR. BRANSON:

Q. Now, isn't it a matter of fact that you and the deceased and your brother were not on good terms? A. Her brother and myself?

Q. Yes. A. Why, she almost died in my arms.

Q. You say you were on good terms? A. I took over the same as if she were a baby. Her brother did not go along because he could not stand the condition she was in and when she would see him she would cry, and so I took his place and I took care of her and at times I met him coming in and I would tell him to go back, that I would take care of her, and I took care of her.

* * *

89 RE-CROSS EXAMINATION

* * *

MR. BRANSON. Your Honor, this man has title to the lots merely for the purpose of securing the loan advanced on those lots.

MR. HAYES. Isn't it a fact that Mr. Robinson has a house built on these lots?

THE WITNESS. Yes.

MR. BRANSON. That is all.

MR. HAYES. That is all.

THE COURT. The interesting thing is who owns the house.

* * *

90 URKWHART BURNETT

DIRECT EXAMINATION

BY MR. HAYES:

Q. Please state your full name for the record. A. Urkwhart Burnett.

Q. And where are you employed, Mr. Burnett? A. Internal Revenue Building.

Q. You are away on account of your illness, is that right? A. Yes, sir.

Q. Mrs. Mamie Logan was your sister? A. She was.

Q. And she lived together with you at 1311 Union Street with your mother, is that right? A. Yes.

Q. Now, when this house was first obtained by whom was it obtained? A. It was obtained by my sister and myself.

Q. How was title taken? A. Taken out in the name of Mayme B. Vessells.

91 Q. Is that her maiden name? A. That was her married name before.

Q. She was married before? A. Yes, sir.

Q. After that time, can you give us any information as to how the notes on the house were paid? A. Yes; she was paying \$35 a month. We were supposed to pay \$35 a month and the notes were paid by my mother. We paid it down to I think it was \$14 a month, but having different things, repairs, going on in the house, such as that, taking out the old stove and putting in a new one, and different plumbing and different things like that that we had put in.

Q. Who was putting up the money for these different things? A. I said get it from the building and loan, not the building and loan but the Equitable.

Q. And how was it paid back? A. Paid back to the Equitable.

Q. Who paid it back? A. Paid on notes. I was working and I would pay the notes at the time. My sister had nothing; she had just come here from Pennsylvania; she had no regular work, and as time went on—

Q. He said, however, he would get in touch with his lawyer? A. He said wait until he would get in touch with his lawyer and he would tell me just what he was doing. He was very, very nice about it. Next morning he said “Mrs. Burnett, absolutely my lawyer, Mr. Morris, said absolutely not to give you anything back” and that was the end of it; apparently over my telephone. That ended Mr. Calhoun. I haven’t seen Mr. Calhoun since or before. I would not even know him.

MR. HAYES. You may inquire.

CROSS EXAMINATION

BY MR. BRANSON:

THE COURT. You say your mother paid it for some time, is that right?

THE WITNESS. Yes, my mother was 90 years old.

THE COURT. Did she or did she not pay on this property?

92 THE WITNESS. Sure, she carried the money up. I was working and I was never there to take it.

BY MR. HAYES:

Q. You meant that your mother physically took the money to the place, but it was either your money or you sister’s money, is that right? A. That is right.

Q. This is the instrument which conveyed title to your sister (indicating agreement)? A. Yes, sir.

MR. HAYES. I offer it, if Your Honor please, to show

that title was taken originally by Mamie B. Vessells on the 7th day of March, 1821, coinciding with what the first witness had said about taking title.

I will show you this instrument and ask you if you know what that is (indicating).

THE WITNESS. Yes, sir.

MR. BRANSON. I have no objection.

(Exhibit above referred to was marked Plaintiff's Exhibit A-NLK and made a part of the record, and is attached hereto.)

BY MR. HAYES:

Q. I will show you this instrument (indicating) and ask you if you know what it is? A. Yes, sir.

Q. This is signed by Mayme B. Logan and this
93 is dated May 17, 1923. Had she is that period married again? A. She had married previous to that time.

Q. And this is a note for \$2,300. Do you know what that note was to secure? The note is to Frank W. Tucker. Do you know who that is? A. No. Pardon me, that is the man whom we bought it from, the elder brother. I cannot remember his name. We bought the property from him, but Mr. Frank was the owner. That is the man. I heard him speak of him.

MR. HAYES. Have you any objection?

MR. BRANSON. I have no objection.

MR. HAYES. I offer this, if Your Honor please. It is a note dated May 17, 1923 in the amount of \$2,300, being secured by a first deed of trust in this amount of \$2,300 signed by Mamie B. Logan.

The Court. Why was the note given two years after the property was purchased?

MR. HAYES. I take it Your Honor, there must have

been some question about the first trust. I take it the trust must have expired and the necessity for giving a new trust arose. That would be my explanation. That would be logical. This other one is dated on the 7th day of March, 1921. This is dated May 17, 1923, which would seem to bear out what he said about the renewal of the first trust. It may have significance in regard to the value of the property.

* * *

96 BY MR. HAYES:

Q. You say it was around that time that her attitude towards you seemed to change? A. Yes, sir.

Q. In August and September 1939, what in your opinion was the condition of her mentality, as to her mind and as to her mental and physical condition so far as you were able to see it? A. Well, it was bad; whenever she would look up, whenever I would come in the house, she would come over to the house and say that she had her troubles, then she would start to cry and raise up and say "Oh God" and then she would break down in tears.

THE COURT. Now, when was that? This deed to Calhoun was made on the 18th day of September, 1939. When was this you saw your sister come into the house crying and go to sleep from this disease that she had and call on the Lord and so on?

THE WITNESS. She would do it every day. She would come in.

THE COURT. What month and what year? As near as you can tell, when was it?

THE WITNESS. I just can't get it straightened out.

THE COURT. Take your time. When did that condition start?

THE WITNESS. Well, Judge, that goes back further than I can say because when she was up in Pennsylvania she came down here with that same complaint. She was suffering from that when she was living here; and she did not live *her* all that time.

THE COURT. When did that condition of mind start?

THE WITNESS. Oh, that started along back in 1936 when my sister-in-law got married. I do not know much about it.

THE COURT. But you know when she turned against you?

THE WITNESS. Yes.

THE COURT. When was that?

THE WITNESS. That was along, the last time she went over to the hospital in 1939 .

THE COURT. That was in February?

THE WITNESS. The last time we went over to the hospital. In fact, she talked reasonable with me but she never—

THE COURT. You will have to take the examination. I cannot do anything.

BY MR. HAYES:

Q. You have said to His Honor that this condition of mind seemed as far as you are concerned to come around the time when she left her job at Fones. Is that right?

A. Yes.

Q. This transaction which took place was in September 1939? A. Yes.

Q. Now, you have also testified that she left her job you believe in August 1939? A. Yes, that is probably right.

Q. His Honor wants to know when with respect to those dates was it that she showed any change of atti-

tude towards you. A. Well, along towards—the last time we took her back to the hospital. I asked her—

Q. When you say the last time, after she had been to the hospital and came back, and went back the second time, which was in February 1940, was that the first time she showed change in attitude towards you? A. Yes.

Q. During that period of time between August and February what if anything did you and your wife do toward contributing toward her maintenance and support? A. Well, we looked after her and gave her food. We gave her coal, food, and seen that she was *a* comfortable as we could make her whenever she came there. A long time she would come there and if she wanted anything we would give it to her. We never kept anything from her and we would not if we could. If I would go in the house with the nurses who would come there from the hospital, or from the District Nurses who would come in, why I would go in there and one time I had to stop my work to go there to fix her and that was the last time when she was sick and I stayed there from that time until we had to put her in the hospital again. Nobody was there to do one earthly thing

for her; there was not anybody there to do anything
99 for her.

Q. So from the time she came from the hospital in September 1939 until the time she went back again you did all the things that you have outlined?

THE COURT. There has been no evidence that she went to the hospital just before September 1939. I think the evidence is that she lost her job.

MR. HAYES. I thought there had been previous testimony.

THE COURT. She went to Gallinger, but she did not take her job again.

MR. HAYES. As far as this witness is concerned I am not certain. There was testimony.

THE COURT. There was testimony she went to the hospital but nothing definite.

MR. HAYES. The young lady's belief was that she went there in August and September, and spoke of a diabetic coma.

THE COURT. There is no evidence that she was in the hospital at the time the deed was executed.

MR. HAYES. She was in the hospital when the deed was executed.

THE COURT. You do not say she had a job when she was in the hospital. It may be perfectly clear to you but not to me.

MR. HAYES. My understanding of it Your Honor—

THE COURT. I know in cases of this kind that the testimony is often indefinite, but a judge cannot do anything about that. We must have information.

100 MR. HAYES. I have a psychiatrist who I want to see the record from Gallinger.

MR. BRANSON. Your Honor, I think I am going to object under our statute to this particular hospital record, and I have a right to object under the rulings of our Court of Appeals.

THE COURT. What is the purpose of the doctor looking at the record?

MR. HAYES. Here is my idea about it, Your Honor, I will put the doctor on the stand from the hospital, and I will have him testify to it. It is my understanding as far as an expert is concerned there is no need for exclusion and he could stay and hear that testimony. It is as broad as long. If Your Honor prefers to put him on the stand why I am entirely agreeable.

THE COURT. There is no other way to do it if that is the purpose of it.

BY MR. HAYES. In your opinion, was your sister in August and September 1939 of a mentality—of sufficient

capacity to make a valid deed or contract? A. No, sir.

* * *

105 Q. So you have nothing on which to predicate your opinion that she was of unsound mind and incapable of executing a valid contract? That is true, isn't it? A. Her mind was bad in my opinion from what the doctor said himself. I am not a doctor. I do not know anything about it.

Q. As far as you are concerned she acted perfectly normal? A. No.

Q. Well, the only thing she did was to cry and ask the Lord to have mercy on her. A. Well, she was a person who did not know what she was doing at times. There were some things as you know that at any time when a person is sick enough to expose herself at a time when people are in and about the house at all times, you would know that her mind was bad, at a time. Now, I do not know anything about those kind of things. I have never been around there and she she could not get up.

MR. BRANSON. I ask it to be stricken as it is not responsive.

MR. HAYES. That is your question.

THE COURT. Is it your testimony that she ex-
106 posed herself?

THE WITNESS. Yes, sir.

MR. BRANSON. And you would be present at times?

THE WITNESS. No, sir; my wife would put her hands up and I was always there to go forward at all times, to help her. She was a sick woman and could not lift herself up and down.

MR. BRANSON. What month was that?

THE WITNESS. In the latter part of her sickness.

MR. BRANSON. That was in the year 1940, is that correct?

THE WITNESS. Yes, or along in there; that was the time.

MR. BRANSON. And that was in her last days?

THE WITNESS. Yes.

MR. BRANSON. That is all.

MR. HAYES. That is all.

* * *

107

DR. ELTORE DE FELIPPIS

DIRECT EXAMINATION

* * *

120 Q. Do your records show anything with respect to an adjudication of insanity? A. Yes, she was heard by the Commission on Mental Health.

Q. When was that? A. March 11, 1940.

Q. And was there an adjudication? A. Yes, sir.

Q. When? A. The same day.

Q. On March 11, 1940 the record shows she was adjudged to be of unsound mind? A. Yes, sir.

THE COURT. When did she die, Doctor?

THE WITNESS. March 19, 1940.

BY MR. HAYES:

Q. And that was prior to the time that she had been committed to St. Elizabeths Hospital under the terms of the order prior to which she was committed. She died still in your institution, prior to being committed to St. Elizabeths. A. She did.

THE COURT. Are you glad that I overruled the objection.

MR. BRANSON. It has not done me any harm so far.

BY MR. HAYES:

121 Q. Doctor, does the record disclose that the insanity was found, as to what the nature of the insanity was? A. Yes, sir.

Q. Will you tell us what that was? A. Psychosis, with cerebral arteriosclerosis, complicated by cerebral hemorrhage.

Q. Is that, Doctor, a condition that is a progressive condition? A. Yes, it is progressive; it gets worse in time.

Q. And its onset, I take it, is progressive. I mean a person continues to go until he gets to a stage where it—
A. (interposing). They usually do not recover from an arteriosclerosis.

THE COURT. How is that?

THE WITNESS. They usually do not recover from an arteriosclerosis.

THE COURT. Do you ever recover from hardening of the arteries?

THE WITNESS. It is a progressive affair, especially at a certain age.

BY MR. HAYES:

Q. And this patient 65 years of age, does that indicate that there is a progressive situation?

THE COURT. You will be in contempt of court the first thing you know. I am 65 years of age.

122 THE WITNESS. In my opinion it would be progressive at that age.

BY MR. HAYES:

Q. And when you speak of "progressive," Doctor, can you give me a term of months and years as to what you would think, how much time is likely to elapse before an adjudication of insanity by reason of that circumstance?

A. That I could not say.

Q. You could not say? A. No, sir.

MR. HAYES. You may examine the witness.

MR. BRANSON. I have no questions.

* * *

123

DR. ERNEST Y. WILLIAMS

DIRECT EXAMINATION

BY MR. HAYES:

Q. Doctor, please state your full name for the court.

A. Dr. Ernest Y. Williams.

Q. And from what school have you graduated, Doctor?

A. Howard University, 1930.

Q. And in what have you specialized? A. Neurology and psychiatry.

Q. What position have you with the school or university? A. I am in charge of the new psychiatry section in Freedmen's Hospital and I am in charge of neurology and psychiatry at Howard University.

Q. Have you had experience at other than Howard University? A. Yes, sir; one year at St. Elizabeths, not as a patient; one year at Columbia and one year between Cornell and New York University.

Q. And are you still a member of any recognized national organizations with respect to this field of psychiatry?

A. I am connected with the National Board of Neurology and Psychiatry.

124 Q. I think you have qualified as an expert in any number of cases in courts of this jurisdiction? A. I have.

* * *

128 MR. HAYES. I will ask to have an exception under the present rule.

THE COURT. Exception noted.

MR. HAYES. All right, Doctor, come down.

(Witness excused.)

MR. HAYES. I take it would not preclude the offering of an opinion of the psychiatrist?

THE COURT. No.

MR. HAYES. If your Honor please, I want to offer in evidence the lunacy docket of our Court in No. 21073 in regard to Mamie Burnett Logan, the deceased person about whom we are making inquiry, calling attention to the adjudication of unsoundness of mind. The record will disclose that as of the 11th day of March, 1940, and the date to which the doctor has already testified, the Commission on Mental Health, acting on the direction of this Court, made the examination of the mental condition of Mamie Burnett Logan, and after inquiring into all affairs, conducted a hearing on March 11, 1940, and reported
129 the following findings:

“1. That Mamie Burnett Logan is of unsound mind, suffering from a psychosis with cerebral arteriosclerosis, is incapable of managing her affairs, is not a fit person to be at large or go unrestrained, and is a fit subject for

commitment to a hospital, for treatment of her mental condition.

“2. That Mamie Burnett Logan is a resident of the District of Columbia, within the provisions of the Act of Congress, approved June 8, 1938, as amended.

“3. That Mamie Burnett Logan is the owner of the premises located at 1311 Union Street, S. W., but is otherwise without funds and unable to pay the expense of her maintenance and treatment in a hospital.

“4. That the following relatives of Mamie Burnett Logan were present at the hearing: Mattie Burnett, sister-in-law and Urqwhart Burnett, brother, residing at 1307 Union Street, S. W.; Reginald Burnett, nephew; and Helen Burnett, Niece, residing at 1352 Union Street, S. W., all of whom were present at the hearing and recognizing the need of hospitalization for the respondent's mental condition, request the treatment at St. Elizabeth's Hospital for Insane.

WHEREFORE the Commission on Mental Health recommends to the Court as follows:

“1. That Mamie Burnett Logan be adjudged and decreed to be of unsound mind.

“2. That Mamie Burnett Logan be committed to
130 St. Elizabeth's Hospital for maintenance and treatment of a mental condition.

“3. That the maintenance and treatment of Mamie Burnett Logan in St. Elizabeth's Hospital be at public expense.

"4. That a committee be appointed to marshal and administer the estate of Mamie Burnett Logan and report to the Court the ability thereof to pay or contribute to the expense of maintenance and treatment of Mamie Burnett Logan in St. Elizabeth's Hospital, to the District of Columbia."

That is signed by the Commission on Health, Gillette B. Walsh, Chairman.

That is followed by an order of Judge Laws, it being an order of adjudication and commitment of the Court the 19th day of March, 1940, which reads as follows:

"Adjudged, decreed and ordered:

"1. That Mamie Burnett Logan be and she hereby is declared to be of unsound mind, incapable of managing her own affairs, and is not a fit person to be at large or go unrestrained, and is a fit subject for commitment to a hospital for treatment of a mental condition.

"2. That Mamie Burnett Logan be and she hereby is committed to St. Elizabeth's Hospital for maintenance and treatment of her mental condition, until she can be safely discharged therefrom.

"3. That Mamie Burnett Logan is a resident of the District of Columbia, within the provisions of the Act of Congress approved June 8, 1938, as amended.

131 "4. That the expense of the maintenance and treatment of Mamie Burnett Logan in St. Elizabeth's Hospital shall be borne and paid by the District of Columbia, until further order of this Court."

The order is signed "F. D. Letts, Justice."

Then there is a memorandum to the Commission on Mental Health, under date of March 20, 1940:

"Re Mamie Logan:

"This is to inform you that Mamie Logan, a 65 year old colored woman, whose case was heard by the Commission on Mental Health on March 11, 1940, died in this hospital on March 19, 1940, at 7:10 a. m."

Signed "Edgar A. Bocock, Md., Superintendent."

And may I offer this deed.

THE COURT. There has been no testimony in the case as to the value of the property.

MR. HAYES. I have an expert.

132 Thereupon,

THOMAS W. PARKS

was called as a witness, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HAYES:

Q. What is your full name, Mr. Parks? A. Thomas W. Parks.

Q. You are a member of the Bar, I believe? A. I have been.

Q. And have been for what length of time? A. Since 1930.

Q. And you are also engaged in the real estate business? A. I am.

Q. And are owner of the Parks Realty Company? A. I am.

Q. Have you had any experience in the buying, selling and appraisals of real property in the District? A. I have.

Q. And have testified in regard thereto? A. I have.

Q. Have you looked at the premises 1311 Union Street, S. W.? A. I have.

Q. And have you looked at other properties in 133 their vicinity? A. I have.

Q. Can you tell me, sir, as to what in your opinion would be a fair market value of the property at 1311 Union Street, S. W., what it was in September 1939, and as to what its market value is of today? A. That is a six-room house, three rooms on each floor, a brick house, and a fairly good neighborhood, and the value in 1939 would have been \$4,250 and now the value is \$4,650.

MR. HAYES. You may cross-examine.

CROSS EXAMINATION

BY MR. BRANSON:

Q. How much is land worth per square foot? A. That land is assessed at 50 cents per square foot by the Assessor.

Q. Fifty cents a square foot? A. Yes, by the Assessor.

Q. And how much frontage is there? A. Sixteen feet.

Q. What is the depth of that lot? A. 60.92 feet.

Q. 60.92 feet? A. Yes, sir.

Q. And how old is that house there that is on it, in your estimation? A. I would say about 25 years old.

134 Q. About 25 years old? A. Yes, sir.

Q. Have you sold any houses on Union Street or the southwest section of the city? A. I have.

Q. How many with respect to the year 1939? A. Specifically in Union Street in 1939?

Q. Yes. A. None in that particular square in 1939.

Q. And is there electricity in that house? A. Yes.

Q. Hot water heat? A. Yes.

Q. Is that a cash price hat you have given? A. Cash price.

Q. Cash price \$4,250? A. Now \$4,650, 10 per cent over.

* * *

MR. HAYES. If Your Honor please, before we
140 proceed with this witness, may I call your attention to a situation which I have found over the recess period which may have some effect on Your Honor's ruling, if I understand the basis of Your Honor's ruling.

Your Honor well knows I subpoenaed the records from Gallinger Hospital and the doctor testified that the record shows an admission in 1939. I have learned and I have in my hands a communication from Gallinger Hospital addressed to Mrs. Brooks, the social worker, which reads as follows (reading):

"May 24, 1938.

Mrs. Eilean Brooks

Case Worker, Public Assistance Division

First & I Streets, S. W.

Washington, D. C.

"My dear Mrs. Brooks:

"In reply to your letter of May 23 I take pleasure in furnishing you with the desired information as follows:

"Mamie B. Logan was admitted to this hospital on Feb-

ruary 11, 1938 and was found to have diabetis mellitus, with gangrene of the foot.

"Her diabetes is under control but the foot is not entirely healed. However the doctors feel that she is well enough to leave the hospital by the end of this week, but she will have to attend the Diabetic Clinic at George Washington Hospital.

Yours very truly,

(signed) "EDGAR A. BOCOCK, "Md."

Superintendent."

141 I do not know whether or not Your Honor's ruling in which you excluded the testimony of the expert was based on the fact that Your Honor felt that there was no showing of a diabetic condition existing prior thereto.

THE COURT. The fact was that a great deal of testimony was based on what was done by this deceased and what her condition was after she came back from the hospital the first time. That may have been the first time, February, 1938.

MR. HAYES. Well then, the thing that was the basis of Your Honor's ruling was not the fact that there was a showing prior to the time of this alleged deed in September, 1939?

THE COURT. That had something to do with it, of course. Mrs. Burnett testified to two things: One was that this condition in which she said her sister-in-law existed in August, September and October, 1939. She also said it existed after the first admission to the hospital, and then testimony was that the first admission to the hospital was in November, and the consequence is that the testimony appears to be so uncertain.

MR. HAYES. That is why I call attention to the fact there had been previous testimony.

THE COURT. That testimony is according to the testimony of the psychiatrist.

MR. HAYES. All right, I will have him called.

THE COURT. The Court understood that the defendant's counsel agrees that that letter read is admissible.
142

MR. HAYES. It is a public record; it is stamped.

THE COURT. As I remember what you said it was a letter, wasn't it?

MR. HAYES. Yes, sir; addressed to the Associate Worker, Mrs. Brooks, and signed by Dr. Bocock and bearing the stamp of the Board of Public Welfare on it.

THE COURT. Is there any question in the mind of counsel for the defendant as to it being in the record?

MR. BRANSON. I have no doubt this is authentic, as it is a letter addressed to the Public Assistance.

* * *

143

RUSSELL MORRIS

* * *

144

CROSS EXAMINATION

BY MR. HAYES:

Q. Mr. Morris, how long have you known Mr. Calhoun?

A. Practically all my life.

145 Q. Practically all your life? A. Yes, sir.

Q. Now, prior to this transaction, have you been in a representative capacity for Mr. Calhoun? A. Many times.

Q. Many times? A. Many times.

Q. You have been attorney for him on occasion and have known him all your life? A. Yes, sir.

Q. You say Mr. Schwarz called you? A. That is right.

Q. You are certain of that? A. I am certain.

Q. Did he tell you at that time that he had suggested to Mr. Calhoun that in order to buy this piece of property it would be necessary that the will be probated? A. That is right.

Q. Now you are certain Mr. Schwarz told you that, and not Mr. Calhoun? A. Mr. Schwarz.

Q. And you were not acting in a representative capacity for Mr. Calhoun? A. No, I had not been in touch with Mr. Calhoun before I saw Mr. Schwarz. As a matter of fact, I did not know anything about the transaction
146 until Mr. Schwarz called me in.

Q. Did Mr. Schwarz know about you before then? A. I testified as a result of the conversation with Mr. Schwarz he got me, Mrs. Logan, Mr. Calhoun and Mr. Robinson present at his office that day.

Q. Do you know any reason Mr. Schwarz called you to take care of this situation? A. The only reason I could give is that he must have been given my name by some of these people.

Q. Some of which people? A. Those who were at the conference.

Q. Who was at the conference? A. Mrs. Logan.

Q. Did you know Mrs. Logan prior to that time? A. I had heard of her.

Q. You did not know her? A. No.

Q. You knew Mr. Robinson? A. Yes.

Q. And you knew Mr. Calhoun? A. Yes.

Q. For a period of years? A. Yes; I have known Mr. Robinson for a good number of years and Mr. Calhoun I have known practically all of my life.

Q. Was there any suggestion that Mr. Calhoun
147 suggested that you be called to probate this will? A. Not at that time.

Q. At what time was it that did happen? Why did you say "not at that time"? A. In answer to your question I will say this, prior to that time the first I heard about these lots was several months before when Mr. Robinson met me and said some lady, he did not know the name, wanted to deed the lots. He wanted to buy them at a reasonable price.

Q. So your knowledge with respect to the deeding of the lots in Maryland came a full month or so before you were called? A. He said he wanted to buy them. That is all I knew about it. I never thought about the matter until I got the telephone call.

Q. I want to be certain I follow you. A. Yes.

Q. Robinson first contacted you about the situation? A. He did not contact me, Mr. Hayes, physically for that. I happened to see him as I used to see him at various times and he said when he was going to get some lots. It did not interest me; I was not paid to do anything, and he asked me when the time came would I be willing, if he took me to the lady, to get the lots straightened out. I said I would and that is the last I heard until I got the call from Mr. Schwarz.

Q. And it was subsequent to that you say you were called by Mr. Schwarz? A. Yes, on the 14th of September.
148

Q. Did you have any conversation with Mr. Calhoun after the time of this transaction? A. About what?

Q. About this transaction. A. Yes, I talked to him about it.

Q. Will you tell us what the nature of the conversation was? A. The conversation was that I was engaged to probate the will and that he had put up \$200 with Mr. Schwarz to pay off the taxes to keep the Maryland people from giving somebody a tax deed, and that I was in a representative capacity for Mrs. Logan. I paid the money,

whatever was due, and paid the court costs for administration and things of that sort.

Q. Well, did you at any time have any conversation with him when he asked you first as to whether or not the property should be reconveyed? A. What reconveyed? What property?

Q. The Union Street property? A. No.

Q. You never had any conversation with him about that? A. Not about reconveying the property.

Q. Did he at any time ever call you and ask you as to whether or not it would be proper for him to reconvey the property if he was put back in proper status by
149 having his money returned to him that he had advanced? A. No, he received a letter from you: I think I have it here; a copy of the letter.

Q. Prior to the time of any letter from me? A. No.

Q. You never had any conversation with him about it? A. He did not have any need to have any.

Q. You never advised him anything with respect to it, after the transaction was had? A. There was nothing wrong with the transaction; my advice was not needed. There was no need to give advice when the advice is fair and square.

MR. HAYES. Of course Your Honor knows the answer is not responsive to my question.

THE WITNESS. You are asking me a question and I am giving you my reason and feeling why I did not have any conversation about it.

BY MR. HAYES:

Q. While at the time you were allegedly representing Mrs. Logan? A. Yes.

* * *

162

MRS. RUTH VENNEY

• • •

167

CROSS EXAMINATION

• • •

168 Q. All right, did you at any time have any accounts jointly with her? A. Yes.

Q. And what was the nature of that account, Madam?
A. She got some money from the Metropolitan.

Q. When was that? A. It was in March.

Q. March of what year? A. March of 1939.

Q. March of 1939? Yes.

169 Q. And out of the funds she received you opened a joint account, the two of you? A. She opened a joint account, I was with her.

Q. Wasn't your name put on it? A. Yes.

Q. Did you take withdrawals? A. Yes.

Q. How much did she get at that time? A. She had two checks for I think \$411.

Q. \$411 was one of them, or the combined amount? A. \$411 was the two.

Q. That was in March? A. March.

Q. And you say in September she was penniless? A. Yes.

Q. Did you withdraw any of that money? A. Yes.

Q. Incidentally, at that time what name did she use?
A. Logan.

Q. She used Mamie Logan, are you sure of that? A. She wanted to put the name in as Mamie Vessells.

Q. Did she put the money in as Mamie Vessells or Mamie Logan? A. I do not know whether—

170 Q. Do you know why she wanted to put it in that

way? A. She said she did not want any of those Logan people getting the money.

Q. And therefore you were in a joint account with her? A. Yes.

Q. When was the money used up? A. She only put about \$200 in the bank.

Q. Do you know what she did with the other \$211. A. She spent it.

Q. Did you help her spend it? A. No; I was with her when she spent it.

Q. And the \$200 that she put in the bank, when was that used up? A. At different times.

Q. When was it finally used up? A. Well, about June or July.

Q. So that between March and June or July she had used up this \$211 which she had gotten and also the \$200 which she put in the bank? A. She used up the entire \$411.

Q. Did she at that time say anything to you about the payment of any indebtedness insofar as the building association was concerned? A. I do not think she paid anything out of the insurance money to the building association.

Q. Did you know she was in arrears with the building association at that time? A. When I first went with her to the building association her book was in arrears.

Q. Were you taking a joint control in order to assist her in the conduct of her business? A. She asked me to do it because on account of her being blind she was not able to get it out.

Q. Then you got the joint control account idea of being of assistance to her? A. Yes.

Q. Did you have anything to do with the suggestion

of the expenditure of that amount? A. I had nothing to do with the expenditures.

Q. And all expenditures were made at her own suggestion? A. Yes, sir.

Q. And you indicate the amount was used up between March and June? A. Yes.

RE-DIRECT EXAMINATION

BY MR. BRANSON.

Q. She used the money for her own purpose? A. Yes.

BY MR. HAYES:

Q. You say you live at 1311 Union Street, S. W.?

172 A. I do now; yes, sir.

Q. That is the house owned by Mr. Calhoun? A. Yes, sir.

Q. At the time of this transaction, when it was going on, you lived across the street? A. Yes, sir; at 1310.

Q. And you moved across the street? A. Yes, sir.

Q. And you pay rent to Mr. Howenstein for the occupancy of those premises? A. Yes, sir.

BY MR. BRANSON:

Q. Do you know what become of that money? A. I could not say just exactly how she used it, but I can give you a little description. At first she got Mr. Fone to cash a check. He is on 4th Street. She left the money with him for a couple of days and when we went back, and I went back to get the money it was \$300, a little over \$300. She had already sent someone there one time and he had sent around \$50 and then some more. And then I think

on a Thursday morning, I used to take her around in my car, and she sent for me that she wanted to go to put the money in the bank and we put \$200 in the bank and the other \$105, or \$100, something like that, we went up town. We went to the Lucky Strike dress shop and she bought some clothes, two dresses, a coat, two hats, two
 173 pairs of shoes, and a pocketbook. She spent over \$50 at the Lucky Strike dress shop, and from there we went to Goldenbergs and she spent the balance of the money there, at Goldenbergs for household things. That was all that day. Then after that we went, I went with her to the bank, her and I together, and we got money out and we went to Sears & Roebucks, and we spent about \$26 as near as I can remember at Sears & Roebucks, for paint and different things for the house, and every time I would go with her I would always stop by the store and she would get groceries \$8 to \$10 at the store at 4th & K Streets, S. W.; then I went with her to the bank and I think she took out \$50. She paid a plumber for some repair work on the roof of the house, or something to that effect, and from then on she sent me to the bank. I used to go on Saturday morning and get \$10 or \$15 and then come back and get her and go to the grocery store and get groceries, and when I stopped going to the bank for her she had just about \$20 left in the bank.

MR. BRANSON. That is all.

RE-CROSS EXAMINATION

BY MR. HAYES:

Q. Why did you stop going? A. I went to work. I got a job in Pennsylvania and went to work.

Q. From that time forward you had no contacts? A. I would have seen her at any time.

174 Q. Did you know at any time that she was sick and went to the hospital? A. Yes.

Q. When? A. I think she was sick in 1938.

Q. Was she sick after that time and went to the hospital? A. Yes, she died in the hospital.

Q. She went then, and at the time of her death, and was she in the hospital on other occasions? A. I don't remember.

Q. You say that when she first left this money with Mr. Fone she went back and had \$300, that she had already drawn \$100 in a couple of days. You do not know what she did with that \$100? A. I do remember she owed Mr. Seedy, a coal man, for coal that she had gotten at different times.

Q. Do you know what the amount was? A. I do not know what the amount was. She went to him first to try to have him cash the check and then she went back to the man with whom she used to work.

MR. HAYES. That is all.

RE-DIRECT EXAMINATION

BY MR. BRANSON:

Q. Do you know in 1938 how she got her food, whether she personally bought her food as of August 1938
175 and September 1938, or how did she get it? A. I did not know much about her affairs then because I was not looking out for her.

Q. Did you talk to her in 1939? A. In 1939, yes.

Q. Now in 1939 how did she get her food? A. Well, she had some roomers in her house.

Q. And you were frequently in and out? A. In and out, yes.

Q. Did you ever see Mr. and Mrs. Burnett bring food?

A. Yes, I have seen them bring or take her food.

• • •

180

SAMUEL E. LACY

• • •

183 Q. You testified, sir, that Mr. Morris as part of the conversation explained to the lady that payments were past due on her house? A. Yes.

Q. And that foreclosure was threatened? A. Yes.

Q. You heard him tell her that? A. Yes. I heard it said.

Q. Do you know why he was telling her that at
184 the time she was signing the deed? A. I do not know.

Q. You had no knowledge of that? A. Yes.

Q. And it was under that suggestion that she said she was willing to sign? A. I will not say it was under that suggestion.

Q. Didn't she say she was willing to sign the deed after Mr. Morris had outlined what he said to her. A. Well, it was—I guess so.

Q. All right, what happened was Mr. Morris called her attention to the fact that the payments were past due on the house, that foreclosure was threatened, that under this arrangement she would have a place to stay and she said I am willing to do it and sign it. A. No, I will not place it that way. I will not say that she said it in that way.

Q. What way did she say it? A. She said that she had to have some assistance as the only means by which she would have a home assured to her and I will repeat again that she said she had no way to get assistance from her brother who lived right next door to her.

Q. That statement was made by her after the time that Mr. Morris had made his statement? A. I will not say afterward, but it was during the conversation, Mr. 185 Hayes.

Q. Didn't you say just now it was just after? A. I may have.

Q. Are you right or wrong? A. I am not certain.

Q. You do not know whether it was before or after? A. I am not certain whether it was before or after, or during the conversation. I cannot replace it. It was quite a while ago. I did not have any idea this was coming up.

Q. But during the conversation you remember about payments past due and foreclosure threatened, and then she signed a deed? A. I am reasonably sure that was said.

Q. Now your conclusion with respect to this lady's soundness of mind is based upon that statement that you said she made and the fact that you signed the instrument and she signed it in your presence. You saw her on that one occasion? A. We were there on that occasion for nearly an hour.

Q. For what? A. Talking, in making arrangements, getting her to sign.

Q. All right.

RE-DIRECT EXAMINATION

BY MR. BRANSON:

Q. Now, Mr. Lacy, when you left your office did 186 you go by and pick up Mr. Calhoun? A. No, I was out. I was not in the office when Mr. Calhoun and Mr. Morris were there waiting for me when I came in. When I came back, I had been out, they were there. We got in Mr. Calhoun's car and went down there.

Q. Now isn't this what happened? You and Mr. Morris went to Mr. Calhoun's house?

MR. HAYES. He said that is not his recollection. This is your witness and you cannot impeach your own witness.

MR. BRANSON. I am trying to clarify it.

MR. HAYES. He testified specifically as to his recollection. I object.

THE COURT. Well, of course, the weight of the testimony is naturally affected. The Court thinks that it is legally permissible to call a witness' attention to an alleged special state of facts when he testified rather in general terms. The Court thinks the testimony is legally admissible.

BY MR. BRANSON:

Q. Mr. Lacy, did that happen? A. May I say as I recall it now, one of Mr. Calhoun's drivers was with Mr. Morris, and I think we did go to Mr. Calhoun's house and Mr. Calhoun then took the car and we went there. I think that it was one of Mr. Calhoun's drivers with his car, and they started off when I came in the office, and then we went down to Mr. Calhoun's, past Mr. Calhoun's house, and then Mr. Calhoun drove us to this house. I was
187 mistaken about Mr. Calhoun being there at the beginning.

MR. HAYES. How?

THE WITNESS. I was mistaken about Mr. Calhoun being in the office at the beginning.

BY MR. BRANSON:

Q. Now, Mr. Lacy, did Mr. Calhoun ever enter into the conversation and make suggestions?

MR. HAYES. It is not proper re-direct examination?

MR. BRANSON. We went into it and I think I am entitled to re-direct the witness.

MR. HAYES. It certainly is not re-direct examination.

THE COURT. The question is leading now. Of course, leading questions seem to be the only questions asked in the District of Columbia.

BY MR. BRANSON:

Q. What happened with respect to Mr. Calhoun entering into the conversation? A. Mr. Branson, I will say that I am not sure as to what length Mr. Calhoun entered into the conversations, but I believe—

MR. HAYES. I object to his believing.

THE COURT. He can give his recollection.

MR. HAYES. All right. You believe he said something.

THE WITNESS. I believe he entered into it.

MR. BRANSON. That is all.

• • •

189 CHARLES HAWKINS

• • •

192 CROSS EXAMINATION

• • •

195 THE COURT. There are two bills for \$25 as I understand.

MR. BRANSON. No, sir, Your Honor. One bill in 1939 was for \$25 for repairs to the roof. Then there is a bill in 1940 or in fact, two separate bills, dated the same day, one of which is for repairs, papering and the like, and the other

is for repairing of the house, painting walls, and floors.

THE COURT. What are the amounts?

MR. HAYES. Of those two bills, one for \$25
196 covers repairs made on floors, door and windows,
and the other with respect to repairs made on a
six-room house, papering, painting walls, etc, for \$162.

THE COURT. What is it for?

MR. HAYES. For papering and painting.

THE COURT. That was after the death of Mrs. Logan?

MR. HAYES. Yes, she died in March and that was in April.

THE COURT. That is not a part of this case. Any repairs made to property after the death of the person whom you claim was last tenant.

MR. BRANSON. She was in occupancy of the premises, but in case Your Honor wants to make a ruling against us we would be entitled to any reimbursement and that would come into the case.

THE COURT. Well that may come into the case.

* * *

197

LEON S. CALHOUN

* * *

DIRECT EXAMINATION

BY MR. BRANSON:

Q. Mr. Calhoun, give you full name and address. A. Leon S. Calhoun, 215 1-2 K Street, S. W., Washington, D. C.

Q. When did you first meet Mamie Logan? A. It was

some time in September, I guess before the middle of September.

Q. And what was the occasion for your meeting her, and when was it you met her? A. The first occasion, Eddie Robinson came to my office. He wanted to borrow \$200 to get some lots. So he carried me to see Mrs. Logan and also Miss Brooks was there, the case worker, and at that time I made arrangements to get the lots. When we left to go to Mr. Schwarz' office Mrs. Brooks at that time advised Eddie Robinson not to—

* * *

209

CROSS EXAMINATION

BY MR. HAYES:

Q. Mr. Calhoun, as I understand you, the reason this property in Maryland was taken in your name was because Mrs. Brooks suggested that be done in order to avoid it appearing in Robinson's name? A. That is right.

Q. And that is the only reason I take it? A. That is the only reason.

Q. Is that (indicating answer to complaint for cancellation of deed and reconveyance of property) your signature? A. That is right.

Q. Now I am reading from your answer, signed by you and sworn to. No, it is not sworn to, but it is signed by you, and filed in this court, in which you say that this defendant was advancing the money in this language:

210 "That as this defendant was advancing the money, and the said Edward Robinson was then on relief, this defendant insisted, in order to secure himself, that the deed to the Maryland property be made in his name."

Is that a fact? A. I did not say that?

Q. When you signed this answer then what you said was not a fact? A. It is as I told you; that is the fact.

Q. You signed it, didn't you? A. I do not know whether I read it. I did not understand that part in there.

Q. I read correctly what is in your answer, didn't I (showing answer to witness)? A. Let me read it. I insisted that it be put up for security.

Q. That (indicating) is what you said in the answer. A. I said it wasn't loaned to him. He could still have the property and pay me.

Q. But in your answer you give as the reason for its being in your name that you wanted it as a matter of security to yourself? A. I did not understand it to be that. What I am giving you is the truth. I would not put it on there.

211 Q. But your signature is on it? A. Yes, sir.

Q. This communication (indicating one of the Defendant's No. 5 exhibits), do you know how you got that? A. A little boy who lived there, I think he lived with Mrs. Logan and he would bring the communications to my house.

Q. That communication (indicating) does not purport to be signed by Mrs. Logan, does it? A. I think this communication—she would get people to write it but when the boy brought the communication I knew it was from her because he was her boy. There are lots of them you will find, sometimes her signature is down there, but when that boy brought something from here I always honored it.

Q. Talking about this communication, why was this communication addressed to "Eddie--?" (Referring to Defendant's Exhibit 5-C) A. That particular communication was addressed to Eddie. I think he brought it.

Q. When you say "Eddie" you mean Eddie Robinson? A. Yes. She wrote him and asked him to have me pay her gas bill. She writes "call him"—meaning me "early be-

cause if it is cut off it will cost me \$2 to have it turned on." I think Eddie brought it.

Q. Do you know who wrote this (indicating)? A. No, I do not.

Q. As a matter of fact, this (indicating) is dated 212 September 25, 1939, isn't it? A. Yes.

Q. And you met this lady September 14, 1939 somewhere about that? A. Somewhere about the 14th?

Q. Was she in the habit of calling you "Lee"? A. Eddie called me Lee and she called me that rather than Calhoun. She never referred to me as Calhoun.

Q. This reference to "Lee" you took to be yourself? A. Yes, because everybody calls me Lee.

Q. Do I understand you, sir, that you identify that as being the signature of Mrs. Logan? A. No, I do not identify that as being the signature of Mrs. Logan, but because the boy brought them. I think Mrs. Venney wrote some of those. She might remember some of those. It looks like her handwriting.

Q. I am asking of her handwriting. A. I do not know, that is not her signature.

Q. You know that is not her signature, and she did not write it. Would you say she wrote that (indicating)? A. Yes, because that is the way she writes, and this one too (indicating).

Q. You would say that is her signature (indicating)? A. Yes.

Q. What about the date on that, would you say 213 that was in her handwriting? A. I would not say that.

Q. And do you know who put the date on that? A. No, I do not.

Q. Would you say that the date was in the same handwriting? A. No.

Q. You would say somebody wrote the note, she signed

it, and somebody put on the date? A. It is not in her handwriting.

Q. And this (indicating) apparently isn't hers here. A. No.

* * *

216

LEON S. CALHOUN

* * *

CROSS EXAMINATION

(resumed)

BY MR. HAYES:

Q. Mr. Calhoun, first of all, what is your address? A. 215 1-2 K Street, S. W.

Q. 215 1-2 K Street, S. W.? A. Yes.

Q. You have never lived between 2nd and 3rd Streets, on P Street? A. No.

Q. And you are living at 215 1-2 K Street, S. W., and you were there in 1939? A. For fifteen years.

Q. Your first contact, Mr. Calhoun, as I understand it, with Mrs. Logan had to do with the purchase by Mr. Robinson who is a friend of yours, of some lots in Maryland? A. That is right.

Q. And the arrangement is that you were to lend Mr. Robinson \$200? A. That is right.

Q. And based upon that you and he and Mrs. Logan went to Mr. Schwarz's office and the arrangements were there consummated for that property, is that correct? A. That is correct.

Q. Now the entire purchase price, as I understand it,

for those lots was \$400. A. That is what the contract calls for.

THE COURT. Speak so that I can hear you.

THE WITNESS. That is what the contract calls for.

BY MR. HAYES:

Q. And do you know how the balance of the \$200 was payable? A. \$10 a monthly I think it was.

Q. Who was to pay that balance, you or Mr. Robinson?

A. Mr. Robinson was supposed to take it up. That was the understanding there between her, I and Mrs. Brooks, and Mr. Schwarz was not supposed to know. Mrs. Brooks said particularly going up there if it was known by Mr. Schwarz that he was taking the property why he would have to pay back that \$30 that he had been getting for his own relief.

Q. Then you understand as far as the contract is concerned you were to pay the \$200? A. That is right
218 according to Mr. Schwarz.

Q. Did you as a matter of fact pay any of the additional \$200? A. Yes; I paid all of it.

Q. So that Mr. Robinson did not pay the balance of \$10 a month? A. He did not; he did not pay \$10 a month. It was paid according to the probate will. They needed the money for probating the will and one time I spent \$50 on it, and that was the end of it.

Q. Did you get the receipts for it? A. Yes, sir.

Q. Where are they? A. They are home.

Q. Why didn't you bring them? A. It was not this contract, therefore I did not bring it.

Q. Can you tell me how the remaining \$200 was paid? A. I do not know exactly just how it was paid, but I am pretty sure that Mr. Morris can tell you because I paid it through him to her.

Q. You paid this balance to Mr. Morris? A. Yes.

Q. You do not have any recollection of how it was paid?

A. I know the time; there was once it was about I think \$60 for probate.

219 Q. Wait a minute. You paid \$60 having to do with the probate of the will? A. Yes, something happened with the probate of the will. She asked me would I give Mr. Morris \$60.

Q. And you did give him \$60? A. Yes.

Q. I suppose you know nothing further of what became of it after you gave the \$60? A. No.

Q. You did not trace the money or the application of the money? A. She sent me something with her signature on it.

Q. Have you that instrument as well? A. Yes.

Q. And the instrument wherein she asked for \$60? A. Yes, sir.

Q. Signed by her? A. Yes, sir.

Q. And you turned the money over to Mr. Morris? A. Yes.

Q. Can you tell me about the balance of the \$200? A. I know it ended up there was about \$50, about Christmas time. That was the balance of that and she sent for that for herself.

Q. Well, between September then and Christmas,
220 aside from the payment that was originally made, you paid to her the difference between \$200 and \$50. In other words, you paid her \$150 between those two times? A. Between those two times. That was the rest of probating of the will; it was necessary to have money so she sent me a note.

Q. So \$150 was paid by you for the probating of the will? A. I do not know whether she used it all for the probating of the will, but at last she needed something for

Christmas. That is what she said on the note and I sent \$50. I have the receipt for that.

Q. That was the balance? A. Of that money.

Q. And that was at or around the same time she was asking you for some of these other small items for gas, water rent, and things of that kind? A. There were different things from time to time after the deed was signed. That did not come into the consideration at all.

Q. Was it at or around the same time that you sent the \$50? A. That came in December and all up to December before that; October, November; you will find some there dated I guess in December.

Q. During that period of time you have advanced
221 her this \$150? A. That is right; \$4, \$2, and things like that. She would send; she asked for a ton of coal, and things like that.

Q. I show you this contract (Defendant's Exhibit No. 1-NLK) and ask you does it anywhere there indicate that Mr. Robinson was to pay the \$200 balance, or does it indicate that the money was to be received through you and was secured through a promissory note?

MR. BRANSON. I object, the contract speaks for itself.

MR. HAYES. I asked him as to whether or not Mr. Robinson was to pay the \$10 a month and Mr. Schwarz was not to know that he would do it, and whether there was anything that would indicate that he would pay it.

THE WITNESS. I explained it to you very clearly. Mr. Robinson did not want Mr. Schwarz to know it. I would still be responsible for the \$200 on the contract; if he did not pay it I would have to pay it.

BY MR. HAYES:

Q. Was it to be your note? A. It was supposed to

be his note, but I was paying it for him. Of course, it was confidential.

Q. You did execute the note? A. No note was executed.

Q. No note was executed? A. No note was executed.

Q. So the contract provided that the purchase
222 price of \$200 and a promissory note of \$200 for the balance, paying 6 per cent interest was not executed? A. No note was executed.

Q. And no interest was paid? A. I paid no interest. I only paid the balance of it and I only paid when she asked me for it, and I know when I paid the \$100. I know that was before the time it expired, and in fact I did not have to pay it until a clear deed was given for it, and I furnished the money for it.

Q. When did you get the deed? A. Not until, say until December. We found that the will had to be probated and ancillary work had to be carried on in Maryland and the will probated. My idea at first was that the property was willed to her and then in fact I would have gone into it more thoroughly if I had bought it myself. I would have gone into it more thoroughly and never bought it.

Q. The fact is that the lot now is in your name? A. Yes.

Q. How many were there? A. Six.

Q. Those six lots were in your name and you eventually paid \$400? A. That is right.

Q. You did not pay 6 per cent interest on the remaining \$200? A. No, I did not pay interest on it; the
223 lots are really Robinson's. He has built a house on it and he is gradually paying me back my money now.

Q. This deed, Mr. Calhoun, provides "That the said party of the second part"—and that is yourself—"is to assume the indebtedness now on the said land and premises

and pay the water rent, taxes, and all other assessments that may come against said property during the life of the life tenant."

What does the expression "all other assessments" mean? Was that explained? A. It was explained to me.

Q. Was it explained to Mrs. Logan in your presence?

A. Yes.

Q. What does it mean? A. All repairs to the property.

Q. When the contract said "assessments" it meant repairs? A. I understood it meant repairs, and I do not know of any other assessments like water rent, taxes.

Q. You provide for water rent and taxes? A. Yes.

Q. And you say "all other assessments," and you say it was explained then. You would take care of "all other assessments"? A. It was explained that the taxes, water rent, and the upkeep of the place. That is the way
224 it was explained to me.

Q. Did "upkeep" mean paying gas, electric light bills, and repair bills? A. We did not figure. What I am trying to say is this: If I had known or had any idea what you are asking me—

MR. HAYES. Your Honor, I think he ought to be responsive.

THE WITNESS. I do not understand your question then.

BY MR. HAYES.

Q. Will you tell me, sir, as to whether or not this "all other assessments" as provided in this deed was explained to you and to Mrs. Logan by the person who drafted this instrument, and if it was explained, will you tell us what that explanation was, "all other assessments." A. No, it was not explained, that "all other assessments." It

was not explained by Mr. Morris. I do not remember "all other assessments." I will tell you what I understood it to be.

Q. Was it explained to you and Mrs. Logan? A. What?

Q. What "all other assessments" meant? A. I do not know about it; I do not think it came up at all. I understood what I was to do.

Q. But your understanding was that you were to take care of the repairs and all incidentals? A. That is right.

Q. All right. Now, when, therefore, Mrs. Logan
225 sent for you and asked you to pay the water rent bill, which you have offered in evidence, you did that because that was a part of your contract. Is that right?
A. That is right.

Q. And when she sent to ask you to pay the gas light bill you did that too because that is a part of your agreement to pay? A. I don't think I agreed to pay the gas bill.

Q. Didn't you say you were to take care of the incidental expenses such as gas? A. What do you mean by "incidental"?

Q. What do you mean by "incidental"? What do you mean by "upkeep"? A. I mean anything pertaining to the property would be an upkeep like preserving the property. That is what I understand upkeep to be.

Q. What do you understand "incidentals" to be? A. "Incidentals"—I do not understand anything in there to say anything about incidentals.

Q. You used the expression. A. I did not mean to use it.

Q. Did you get in touch with Mr. Morris after your conversation with Mr. Schwarz and Mr. Robinson and Mrs. Brooks at Mr. Schwarz' office? A. Did I get in
226 touch with him?

Q. Yes. A. No, I did not get in touch with him about that at all.

Q. Did Mr. Schwarz in that conference say to you that in order to acquire a good title to the lots out there it might be necessary or that it would be necessary to get an attorney to probate the will so that the record would be clear as to that? A. That is right.

Q. He so advised you when you first came in? A. That is right.

Q. Did you get in touch with Mr. Morris? A. No, I did not. It was understood Mr. Schwarz would. I left the money with Mr. Schwarz and he would get in touch there with Mr. Morris.

Q. Mrs. Logan did not mention him? A. On the strength of Robinson she did.

Q. She did not know Morris? A. So far as I know she did not.

Q. So you all suggested, you and Mr. Robinson, suggested for her to engaged Mr. Morris? A. That is right.

Q. And you say you did not get in touch with him? A. No, I did not.

Q. It is a fact that you have known Mr. Morris, as he says, practically all your life, and he has represented you up until this time? A. Not up until this time. I
227 had him represent me several times, and you have.

I have had various attorneys represent me. Of course, Mr. Morris is a very good friend and an able lawyer. In cases I have used him but he is not any particular attorney of mine. He is a particular friend of mine, a lifelong friend.

MR. HAYES. I think that is all I want to ask.

RE-DIRECT EXAMINATION

BY MR. BRANSON:

Q. All of the money that you contracted to pay for the lots was actually paid, was it not? A. That is right.

Q. And that had no bearing on the gas bill and the electric bill and those things? A. No bearing on that whatever.

Q. And you did keep up the notes on the property until Mrs. Logan died? A. Yes, I did.

Q. And you also kept the place in repair? A. Yes, I did.

Q. You did everything?

MR. HAYES. The only repairing he did during her lifetime was the roof, for \$25.

THE WITNESS. That is all that was necessary.

228 BY MR. BRANSON:

Q. You did the repairs that she requested? A. That is right.

MR. BRANSON. That is all.

MR. HAYES. The question of papering and painting that amounted to \$162 and \$50, that was not done until after her death?

THE WITNESS. That was done in between the time of her death and up until the time I could get a tenant.

THE COURT. Was it necessary to paper and paint to that extent in order to get a new client, and if so, why wasn't it necessary to do it for her comfort and convenience?

THE WITNESS. I only did the things that she asked me.

THE COURT. That is all.

THE WITNESS. I never went down to look the property over.

* * *

229

RUSSELL MORRIS

* * *

REDIRECT EXAMINATION

* * *

231 Q. With respect to probating the will in the two jurisdictions you got from Mr. Schwarz \$33? A. That is right.

Q. Did you subsequently get from Mr. Calhoun \$150?

A. That is right.

Q. Mr. Calhoun paid the costs of the administration?

A. That is right.

Q. Have you that here? A. No, I do not have it here. I think the administration in Maryland cost about \$39, and the publication against the heirs at law and next of kin in outside jurisdictions cost about \$25; and court costs here were \$10.00 even, I think; and \$1.72 extra for a certified copy of the Order admitting the will to probate, recorded as the last will and testament of Horace F. Logan; and about \$2.50 for marshal fee and about 50 cents notary fee in the District; and my fee was \$50. Then I was also appointed ancillary administrator in the State of Maryland, Prince Georges County, because the Maryland laws provide that before you can get a title you must advertise to creditors. So I was appointed in February.

232 Q. Did the \$50— A. The whole expense and court costs amounted to about \$130; and I was appointed ancil-

lary administrator in Prince Georges County February 13, 1940, and six months after that I filed my final account with the court down there and paid an inheritance tax of \$5.60 and got a clear title to the property.

Q. And you say the court costs and everything ran about \$130 and some? A. My fee was—the court costs in Maryland was about \$39 and my fee was \$50.

Q. What was done with the balance? A. The balance was paid over to Mrs. Logan. The last to finish out the \$400 was \$50 and I carried it down with a man, Mr. Jackson, I think Christmas Eve, and finished that.

MR. HAYES. I have no question pending?

THE WITNESS. I am answering this question. The property was a divided property. He was not supposed to pay the money until he got a deed to the place. At that time he did not own the place. The will was being probated then.

BY MR. HAYES:

Q. How do you know what he knew? A. There was testimony here that Mr. Schwarz called me in to probate the bill. The will had been lying here in the District.
233

THE COURT. This is filling up the record.

BY MR. HAYES:

Q. It was \$130 you say you paid? You say you gave her \$50, and I take it you gave her the other \$33? A. Yes, sir, at various times.

Q. Between the time of the contract and Christmas time when you gave the final \$50? A. Yes.

Q. Making a total of \$83? A. Yes, sir.

* * *

235

ALEXANDER A. SCHWARZ

* * *

REDIRECT EXAMINATION

BY MR. HAYES:

Q. Mr. Schwarz, when and how did you first come to know Mr. Morris? A. Well, I do not just exactly recall the details of it, but he came to me in relation to the sale of a lot by Mamie B. Logan to Mr. Calhoun; and that was the first time I recall ever having met Mr. Morris, and whether I called him, I am sure that I do not remember ever having called him at that time. I do recall that he came to the office and I explained to him it was necessary in order for Mrs. Logan to pass title that she probate the will of her husband, under which she was the sole heir.

Q. Did you know Mr. Morris at that time? A. No, sir.

Q. And you had no independent recollection of ever having called him. A. No, sir.

Q. You have no recollection of having called him? A. I never called him in relation to that or asked him to represent anybody.

236 Q. You have some records as to the expenditure of that insurance money.

There is just one item I want to bring out, Your Honor.

All right, Mr. Schwarz, there was a report made to your office as to the expenditure of certain moneys received from the insurance policies, about which there has been some testimony. Is that correct? A. Yes, sir.

Q. Will you tell us what it specifically shows as pay-

ments to Mrs. Logan, as detailed by the lady who testified yesterday? A. Yes.

Q. How does it show the account was carried, if it does show it? A. It does not show it. There are items here under miscellaneous—"Ruth \$1," "\$1," "\$5," "Ruth \$1," "Self \$5," "Self \$4."

THE COURT. Who is "Self"?

THE WITNESS. That probably means Mrs. Logan. These were from bits of paper that were handed to us to substantiate the expenditure of the insurance money which she received simultaneously while receiving relief.

Q. And do those give any dates as to when these \$1 or \$5 were paid? A. No, they do not; the dates received were through March 1, 18, and these other appears April 1 and May 1; they do not give it here.

* * *

239

DR. ERNEST Y. WILLIAMS

* * *

REDIRECT EXAMINATION

* * *

241 MR. HAYES (continuing). I think the testimony was it was in February 1938, and it was thereafter there was hospitalization in November of 1939, January of 1940 and February of 1940, would you say, sir, that the damage that was done came as a result of the three last hospitalizations or would it hark back to other situations?

THE WITNESS. The only thing one has to say is that blood vessels change, and going back as far as 1938 to the time when there was gangrene, that is always an evidence

that the blood supply to the area is cut off. As a result of the blood supply being cut off one gets either one or two types of gangrene, one the wet gangrene which occurs usually in deep-seated tissues where evaporation cannot take place, and is caused by interference with both arterial and venous circulation; and the other is dry gangrene which occurs in superficial parts of the body, which remain dry by evaporation of the fluids in the dead tissues, and is due to a defect in the arterial supply while the outflow of the venous blood is unobstructed. In either case you have vascular damage caused by these gangrene.

Q. If, Doctor, the person to whom reference is made lived with her brother over a period of 18 or more years, or 16 years perhaps, and thereafter the brother moved out of the house and moved a few doors down the street—

THE COURT. Two doors away.

242 MR. HAYES (continuing). Two doors off and the relationship between them, according to testimony, had been entirely a friendly one, and thereafter, at or about 1939, in August or September, the attitude toward the brother changed, and there was an apparent hostility, and a suggestion she did not want him in her business and things of that character, would that have any relation as far as the condition and mentality of the person is concerned?

MR. BRANSON. I am going to object to that. I do not think there is any foundation for him to give an opinion as to the condition of mind merely from one isolated instance with relation to it. If he is going to cover all the testimony in a hypothetical question let him do it and then let the Doctor draw his conclusion.

THE COURT. What do you mean by that?

MR. BRANSON. I mean by that Mr. Hays is picking out one single isolated instance separate from everything else, the instance of her hostility toward her brother.

THE COURT. What else is there that you are talking about?

MR. BRANSON. She carried on business about this time with other people.

MR. HAYES. I am going to attempt to give a hypothetical question and try as nearly as I can to include all elements, if I can. This question was not placed with that in mind but rather for the specific question as to whether or not the attitude of an individual as reflected toward his own family had any relation which was apparent?

THE COURT. You mean when there is no apparent reason for it?

MR. HAYES. Well, the attitude changes without any apparent reason.

THE COURT. Suppose the attitude changed and there was no reason for the attitude to change. You must put that in your question when there was no evidence that there was any reason. Don't you understand what I am driving at?

MR. HAYES. Yes, Your Honor. I know there was testimony by persons tending to show her suggesting that her brother did nothing to help her. I think that is what Your Honor has in mind.

THE COURT. Yes.

MR. HAYES. Suppose in that way I will ask the hypothetical question and attempt to cover the things which I believe are all important?

Doctor, if we have an individual born in 1873, who in 1937 is indicated as being an applicant for relief; who, I believe in 1937, in March, was receiving relief with the suggestion that she be put on general relief, and thereafter in a few months is put on relief for the blind—the testimony being that her perception with her right eye was 4 over 200 and the perception of her left eye was 3 over 200. With

that individual in 1939, at or around August having to give up employment, and in September of 1939 we
 244 find her executing, or signing rather an instrument prepared, having to do with the sale of certain lots which she had an interest in in Maryland; that at or around that same time, or within four days thereafter, we have her conveying a piece of property, providing for the retention of a life interest in herself and the remainder interest in the person whom she had not previously known prior to that four days; it shows also that that person was to take care of the outstanding obligations of the upkeep and pay the water rent, taxes and all other assessments; if just in the period of 1938, just prior to that time we have a history of a diabetic condition with gangrene—

THE COURT. Gangrene of the foot.

MR. HAYES (continuing) gangrene of the foot at that time and the suggestion at that time that the hospital was considering amputation; that thereafter there is between the persons with whom she came in contact on the one hand testimony suggesting that she did nothing that would indicate there was any unsoundness of mind; and on the other hand there were relatives and outside persons who gave testimony indicating that she did things that in their opinion were evidence of the fact that she was not of a sound mind; that in November of 1939 we have her hospitalized on account of a diabetic condition—

THE COURT. She had a diabetic coma.

MR. HAYES. Yes, she had a diabetic coma as the result of which there was hospitalization; that thereafter, in January 1940 she was again hospitalized on ac-
 245 count of a diabetic condition. She was released a few days thereafter; and again on the fourth of February was hospitalized, this time sent to a ward for mental observation. Subsequent thereto and on the 11th day of March, 1940, she was adjudged to be of unsound mind,

and thereafter, on the 19th day of March, 1940, she died.

Would you say, Doctor, as to whether or not on the 18th day of September, 1939, that this party was, in your opinion, capable of making a valid deed or contract?

THE WITNESS. I missed part of the story; from 1938, with gangrene?

MR. HAYES. February of 1938 there was a gangrene condition, diabetes mellitus; gangrene of the foot; and a suggestion at that time of amputation, which was not done.

THE WITNESS. Is it possible for me to ask a question, Your Honor?

THE COURT. Yes.

THE WITNESS. Had there been any undue mental, emotional reaction or was there any unusual behavior conditioned or tending to show any financial trouble?

MR. HAYES. There was testimony tending to show in one instance that there was difficulty with the sister whom she threatened with a knife; there was testimony also tending to show that she went very often into crying spells; there was also testimony tending to show that she came into the possession of some \$400, in I believe March of 1939;

that she went together with another lady who lived
246 across the street and who testified she had known

her for only a short time—she went with her and took out a joint account in a bank, putting this lady's name on the account and within two or three days after she received it, and even though at that time she was on relief, or prior to that time she was on relief, she spent over \$200 of the \$400 and in a month or two the remainder of \$200 was spent. There is evidence to show that during that period of time she also had roomers in the house that there was some amount came into her possession as a result of the sale of some lots in Maryland, the testimony being that she received some \$83 also in that period of time.

THE WITNESS. I think it shows very definitely that

over a period of time much longer than March, further back than 1938 even, there might have been gradual slipping over a progressive period of time. Usually an individual who dies with arteriosclerosis and a hemorrhage, this thing cannot develop overnight; it takes about two to three years to produce and the chance that one must go back further than that; any change in this woman's attitude probably had its start back prior to 1938 and 1939; and before that she probably showed some slipping in behavior even further back. It takes really a good two, three or four years in many instances for this process to develop to the point where they can, and the individual might live thereafter

two or three years, so it takes a period of time of
247 five or six years; and during the last two or three years, if you look at the individual he does something silly; at first nobody will pay much attention to it; then they will do things which do not show good judgment or exercise their authority wrongfully; and if you go back far enough you will find if you go back still further—

MR. HAYES. With the adjudication on March 11, 1940 of insanity, specifically, Doctor, would you say she was able to make a valid deed or contract in September, 1939?

THE COURT. The court does not think you can answer that question. It would not help the court a bit either way because the court would not pay the slightest attention to it.

MR. BRANSON. I have no questions.

THE COURT. The court thinks the balance of his testimony is valuable.

MR. HAYES. May I withdraw the word "specifically"?

Doctor, would you give us your opinion as to whether or not in September 1939 this person would have been able to make a valid deed or contract?

THE WITNESS. As I said previously, this condition is something which runs over a period of two or three years.

THE COURT. The Doctor made a very sensible answer. Do not try to press him to say something which I know he could not possibly say as to her condition. The Doctor knows he cannot say specifically that on the 17th and 18th of September, 1940.

248 MR. HAYES. That is the reason I tried to correct it when I realized I used the word "specifically."

THE COURT. He stated that this diabetic condition evidently runs for several years and it was evident from her condition that there was a continually deteriorating mental condition, and the Court knows that is as far as he can go.

MR. HAYES. And Your Honor will not allow the question as to whether in his expert opinion she was or was not able to make a valid acknowledgement?

THE COURT. The Court knows he could not know.

MR. HAYES. That is our case, Your Honor.

THE COURT. The Court has to assume some control over expert testimony. A witness was here the other day who was said to be a very universally known expert on the question of hernia. He testified to considerable extent. The plaintiff had been injured in a stone quarry; he had to lift heavy stones and he was ruptured in the course of his work and he was 65 years old. That expert testified that this hernia would not affect in any way or manner his ability to lift the stones, something which the Court knew was not so.

Therefore, the Court must exercise some control over expert testimony and the Court is thoroughly of the opinion that no expert in the world could base an opinion upon whether or not specifically she was capable of executing a deed and therefore the court rules against the case.

